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Chief Clerk of the House

FILED MAR 01 2005

By: 

H.B. No. 1799

A BILL TO BE ENTITLED

AN ACT

relating to a transfer and nonsubstantive revision of laws  
governing the holding of local option elections regarding alcoholic  
beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17  
to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF

ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission,"  
"liquor," "mixed beverage," and "wine and vinous liquor" have the  
meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section  
1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section  
11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law  
to an election or a local option election held under Chapter 251,  
Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of  
the Alcoholic Beverage Code that relate generally to a violation of

1 a provision of that code, including Chapter 101, Alcoholic Beverage  
2 Code, apply to a violation of a provision of this chapter.

3 [Sections 501.004-501.020 reserved for expansion]

4 SUBCHAPTER B. MANNER OF CALLING ELECTION

5 Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
6 the required number of voters of a county, justice precinct, or  
7 municipality in the county, the commissioners court shall order a  
8 local option election in the political subdivision to determine  
9 whether the sale of alcoholic beverages of one or more of the  
10 various types and alcoholic contents shall be prohibited or  
11 legalized in the political subdivision.

12 Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
13 TO HOLD ELECTION. (a) A political subdivision must have been in  
14 existence for at least 18 months before a local option election to  
15 legalize or prohibit the sale of liquor in the political  
16 subdivision may be held.

17 (b) The political subdivision must include substantially  
18 all the area encompassed by the political subdivision at the time of  
19 its creation and may include any other area subsequently annexed by  
20 or added to the political subdivision.

21 (c) This section does not apply to a municipality  
22 incorporated before December 1, 1971.

23 Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
24 qualified voters of any county, justice precinct, or municipality  
25 file a written application and provide proof of publication in a  
26 newspaper of general circulation in that political subdivision, the  
27 county clerk of the county shall issue to the applicants a petition

1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be

1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and



1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13               (1) clearly stated in the petition; and

14               (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter

1 registrar of the county shall check the names of the signers of  
2 petitions and the voting precincts in which the signers reside to  
3 determine whether the signers were qualified voters of the county,  
4 justice precinct, or municipality at the time the petition was  
5 issued. The political subdivision may use a statistical sampling  
6 method to verify the signatures, except that on written request  
7 from a citizen of the political subdivision for which an election is  
8 sought, the political subdivision shall verify each signature on  
9 the petition. The citizen making the request shall pay the  
10 reasonable cost of the verification. The registrar shall certify  
11 to the commissioners court the number of qualified voters signing  
12 the petition.

13 (b) A petition signature may not be counted unless the  
14 signature is the actual signature of the purported signer and the  
15 petition:

16 (1) contains in addition to the signature:

17 (A) the signer's printed name;

18 (B) the signer's date of birth;

19 (C) if the territory from which signatures must  
20 be obtained is situated in more than one county, the county of  
21 registration;

22 (D) the signer's residence address; and

23 (E) the date of signing; and

24 (2) complies with any other applicable requirements  
25 prescribed by law.

26 (c) The use of ditto marks or abbreviations does not  
27 invalidate a signature if the required information is reasonably

1 ascertainable.

2 (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7 (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9 (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19 Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27 (1) 35 percent of the registered voters in the

1 subdivision for a ballot issue that permits voting for or against:

2 (A) "The legal sale of all alcoholic beverages  
3 for off-premise consumption only.";

4 (B) "The legal sale of all alcoholic beverages  
5 except mixed beverages.";

6 (C) "The legal sale of all alcoholic beverages  
7 including mixed beverages."; or

8 (D) "The legal sale of mixed beverages.";

9 (2) 25 percent of the registered voters in the  
10 political subdivision who voted in the most recent general election  
11 for a ballot issue that permits voting for or against "The legal  
12 sale of wine on the premises of a holder of a winery permit."; or

13 (3) 35 percent of the registered voters in the  
14 political subdivision who voted in the most recent gubernatorial  
15 election for an election on any other ballot issue.

16 (b) Voters whose names appear on the list of registered  
17 voters with the notation "S," or a similar notation, shall be  
18 excluded from the computation of the number of registered voters of  
19 a particular territory.

20 Sec. 501.033. RECORD IN MINUTES. The date a petition is  
21 presented, the names of the signers, and the action taken with  
22 respect to the petition shall be entered in the minutes of the  
23 commissioners court.

24 Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)  
25 The election order must state in its heading and text whether the  
26 local option election to be held is for the purpose of prohibiting  
27 or legalizing the sale of the alcoholic beverages set out in the

1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."

1           (8) "The legal sale of mixed beverages."  
2           (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."  
4           (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."  
6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:  
10           (1) "The legal sale of beer for off-premise  
11 consumption only."  
12           (2) "The legal sale of beer."  
13           (3) "The legal sale of beer and wine for off-premise  
14 consumption only."  
15           (4) "The legal sale of beer and wine."  
16           (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."  
18           (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."  
20           (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."  
22           (8) "The legal sale of mixed beverages."  
23           (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."  
25           (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."  
27           (d) In an area where the sale of all alcoholic beverages

1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4 (1) "The legal sale of beer for off-premise  
5 consumption only."

6 (2) "The legal sale of beer."

7 (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9 (4) "The legal sale of beer and wine."

10 (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12 (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14 (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16 (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21 (1) "The legal sale of beer for off-premise  
22 consumption only."

23 (2) "The legal sale of beer."

24 (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26 (4) "The legal sale of beer and wine."

27 (5) "The legal sale of wine on the premises of a holder

1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed



1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election

1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4 (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8 (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12 Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17 (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21 (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25 (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27 (e) A person who violates Subsection (d) commits an offense.

1 An offense under this subsection is a misdemeanor punishable by:

2 (1) a fine of not less than \$200 nor more than \$500;

3 (2) confinement in the county jail for not more than 30  
4 days; or

5 (3) both the fine and confinement.

6 Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

7 This section applies only to an election to permit or prohibit the  
8 legal sale of alcoholic beverages of one or more of the various  
9 types and alcoholic contents in a municipality that is located in  
10 more than one county.

11 (b) An election to which this section applies shall be  
12 conducted by the municipality instead of the counties. For the  
13 purposes of an election conducted under this section, a reference  
14 in this chapter to:

15 (1) the county is considered to refer to the  
16 municipality;

17 (2) the commissioners court is considered to refer to  
18 the governing body of the municipality;

19 (3) the county clerk or voter registrar is considered  
20 to refer to the secretary of the municipality or, if the  
21 municipality does not have a secretary, to the person performing  
22 the functions of a secretary of the municipality; and

23 (4) the county judge is considered to refer to the  
24 mayor of the municipality or, if the municipality does not have a  
25 mayor, to the presiding officer of the governing body of the  
26 municipality.

27 (c) The municipality shall pay the expense of the election.

1        (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4        [Sections 501.110-501.150 reserved for expansion]

5        SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6        Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter.

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25       (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27       (2) in an election described by Subsection (c), less

1 than a majority of the votes cast favor the issue.

2 Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
3 commissioners court declaring the result of the election is prima  
4 facie evidence that all provisions of law have been complied with in  
5 giving notice of and holding the election, counting and returning  
6 the votes, and declaring the result of the election.

7 Sec. 501.153. CERTIFICATION OF RESULT. Not later than the  
8 third day after the date the result of a local option election has  
9 been declared, the county clerk shall certify the result to the  
10 secretary of state and the commission. The clerk may not charge a  
11 fee for this service.

12 Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A  
13 commissioners court order declaring the result of a local option  
14 election and prohibiting the sale of any or all types of alcoholic  
15 beverages must be published by posting the order at three public  
16 places in the county or other political subdivision in which the  
17 election was held.

18 (b) The posting of the order shall be recorded in the  
19 minutes of the commissioners court by the county judge. The entry  
20 in the minutes or a copy certified under the hand and seal of the  
21 county clerk is prima facie evidence of the posting.

22 Sec. 501.155. ELECTION CONTEST. (a) The enforcement of  
23 local option laws in the political subdivision in which an election  
24 is being contested is not suspended during an election contest.

25 (b) The result of an election contest finally settles all  
26 questions relating to the validity of that election. A person may  
27 not call the legality of that election into question again in any

1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS ~~[ELECTIONS]~~

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code [~~251.14 of this code~~],  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:

1 (c) The provisions of Section 501.107, Election Code  
2 ~~[251.40 of this code]~~ relating to the payment of local option  
3 election expenses shall apply to elections held in a territory that  
4 is defined in accordance with Subsection (a) of this section.

5 SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
6 Code, is amended by adding Section 251.82 to read as follows:

7 Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
8 purposes of an election conducted under Section 501.109, Election  
9 Code, a reference in this code:

10 (1) to the county is considered to refer to the city or  
11 town;

12 (2) to the commissioners court is considered to refer  
13 to the governing body of the city or town;

14 (3) to the county clerk or registrar of voters is  
15 considered to refer to the secretary of the city or town or, if the  
16 city or town does not have a secretary, to the person performing the  
17 functions of a secretary of the city or town; and

18 (4) to the county judge is considered to refer to the  
19 mayor of the city or town or, if the city or town does not have a  
20 mayor, to the presiding officer of the governing body of the city or  
21 town.

22 SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
23 Beverage Code, are repealed.

24 SECTION 8. This Act takes effect September 1, 2005.



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HOUSE OF REPRESENTATIVES

# HOUSE COMMITTEE REPORT

**1<sup>st</sup> Printing**

By: Denny

H.B. No. 1799

A BILL TO BE ENTITLED

AN ACT

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF

ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of

a provision of that code, including Chapter 101, Alcoholic Beverage Code, apply to a violation of a provision of this chapter.

[Sections 501.004-501.020 reserved for expansion]

SUBCHAPTER B. MANNER OF CALLING ELECTION

Sec. 501.021. ELECTION TO BE HELD. On proper petition by the required number of voters of a county, justice precinct, or municipality in the county, the commissioners court shall order a local option election in the political subdivision to determine whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION TO HOLD ELECTION. (a) A political subdivision must have been in existence for at least 18 months before a local option election to legalize or prohibit the sale of liquor in the political subdivision may be held.

(b) The political subdivision must include substantially all the area encompassed by the political subdivision at the time of its creation and may include any other area subsequently annexed by or added to the political subdivision.

(c) This section does not apply to a municipality incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more qualified voters of any county, justice precinct, or municipality file a written application and provide proof of publication in a newspaper of general circulation in that political subdivision, the county clerk of the county shall issue to the applicants a petition

1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be

1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and

1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13                 (1) clearly stated in the petition; and

14                 (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter

1 registrar of the county shall check the names of the signers of  
2 petitions and the voting precincts in which the signers reside to  
3 determine whether the signers were qualified voters of the county,  
4 justice precinct, or municipality at the time the petition was  
5 issued. The political subdivision may use a statistical sampling  
6 method to verify the signatures, except that on written request  
7 from a citizen of the political subdivision for which an election is  
8 sought, the political subdivision shall verify each signature on  
9 the petition. The citizen making the request shall pay the  
10 reasonable cost of the verification. The registrar shall certify  
11 to the commissioners court the number of qualified voters signing  
12 the petition.

13 (b) A petition signature may not be counted unless the  
14 signature is the actual signature of the purported signer and the  
15 petition:

16 (1) contains in addition to the signature:  
17 (A) the signer's printed name;  
18 (B) the signer's date of birth;  
19 (C) if the territory from which signatures must  
20 be obtained is situated in more than one county, the county of  
21 registration;

22 (D) the signer's residence address; and  
23 (E) the date of signing; and

24 (2) complies with any other applicable requirements  
25 prescribed by law.

26 (c) The use of ditto marks or abbreviations does not  
27 invalidate a signature if the required information is reasonably

1 ascertainable.

2 (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7 (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9 (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19 Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27 (1) 35 percent of the registered voters in the

1 subdivision for a ballot issue that permits voting for or against:

2 (A) "The legal sale of all alcoholic beverages  
3 for off-premise consumption only.";

4 (B) "The legal sale of all alcoholic beverages  
5 except mixed beverages.";

6 (C) "The legal sale of all alcoholic beverages  
7 including mixed beverages."; or

8 (D) "The legal sale of mixed beverages.";

9 (2) 25 percent of the registered voters in the  
10 political subdivision who voted in the most recent general election  
11 for a ballot issue that permits voting for or against "The legal  
12 sale of wine on the premises of a holder of a winery permit."; or

13 (3) 35 percent of the registered voters in the  
14 political subdivision who voted in the most recent gubernatorial  
15 election for an election on any other ballot issue.

16 (b) Voters whose names appear on the list of registered  
17 voters with the notation "S," or a similar notation, shall be  
18 excluded from the computation of the number of registered voters of  
19 a particular territory.

20 Sec. 501.033. RECORD IN MINUTES. The date a petition is  
21 presented, the names of the signers, and the action taken with  
22 respect to the petition shall be entered in the minutes of the  
23 commissioners court.

24 Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)  
25 The election order must state in its heading and text whether the  
26 local option election to be held is for the purpose of prohibiting  
27 or legalizing the sale of the alcoholic beverages set out in the



1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."

1           (8) "The legal sale of mixed beverages."

2           (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."

4           (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."

6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:

10           (1) "The legal sale of beer for off-premise  
11 consumption only."

12           (2) "The legal sale of beer."

13           (3) "The legal sale of beer and wine for off-premise  
14 consumption only."

15           (4) "The legal sale of beer and wine."

16           (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."

18           (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."

20           (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."

22           (8) "The legal sale of mixed beverages."

23           (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."

25           (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."

27           (d) In an area where the sale of all alcoholic beverages

1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4           (1) "The legal sale of beer for off-premise  
5 consumption only."

6           (2) "The legal sale of beer."

7           (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9           (4) "The legal sale of beer and wine."

10           (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12           (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14           (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16       (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21           (1) "The legal sale of beer for off-premise  
22 consumption only."

23           (2) "The legal sale of beer."

24           (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26           (4) "The legal sale of beer and wine."

27           (5) "The legal sale of wine on the premises of a holder

1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed

1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election

1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4 (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8 (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12 Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17 (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21 (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25 (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27 (e) A person who violates Subsection (d) commits an offense.

An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$200 nor more than \$500;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) An election to which this section applies shall be conducted by the municipality instead of the counties. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.



1        (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4        [Sections 501.110-501.150 reserved for expansion]

5        SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6        Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter.

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25           (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27           (2) in an election described by Subsection (c), less

1 than a majority of the votes cast favor the issue.

2 Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
3 commissioners court declaring the result of the election is prima  
4 facie evidence that all provisions of law have been complied with in  
5 giving notice of and holding the election, counting and returning  
6 the votes, and declaring the result of the election.

7 Sec. 501.153. CERTIFICATION OF RESULT. Not later than the  
8 third day after the date the result of a local option election has  
9 been declared, the county clerk shall certify the result to the  
10 secretary of state and the commission. The clerk may not charge a  
11 fee for this service.

12 Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A  
13 commissioners court order declaring the result of a local option  
14 election and prohibiting the sale of any or all types of alcoholic  
15 beverages must be published by posting the order at three public  
16 places in the county or other political subdivision in which the  
17 election was held.

18 (b) The posting of the order shall be recorded in the  
19 minutes of the commissioners court by the county judge. The entry  
20 in the minutes or a copy certified under the hand and seal of the  
21 county clerk is prima facie evidence of the posting.

22 Sec. 501.155. ELECTION CONTEST. (a) The enforcement of  
23 local option laws in the political subdivision in which an election  
24 is being contested is not suspended during an election contest.

25 (b) The result of an election contest finally settles all  
26 questions relating to the validity of that election. A person may  
27 not call the legality of that election into question again in any

1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code [~~251.14 of this code~~],  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:

1           (c) The provisions of Section 501.107, Election Code  
2 ~~[251.40 of this code]~~ relating to the payment of local option  
3 election expenses shall apply to elections held in a territory that  
4 is defined in accordance with Subsection (a) of this section.

5           SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
6 Code, is amended by adding Section 251.82 to read as follows:

7           Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
8 purposes of an election conducted under Section 501.109, Election  
9 Code, a reference in this code:

10                 (1) to the county is considered to refer to the city or  
11 town;

12                 (2) to the commissioners court is considered to refer  
13 to the governing body of the city or town;

14                 (3) to the county clerk or registrar of voters is  
15 considered to refer to the secretary of the city or town or, if the  
16 city or town does not have a secretary, to the person performing the  
17 functions of a secretary of the city or town; and

18                 (4) to the county judge is considered to refer to the  
19 mayor of the city or town or, if the city or town does not have a  
20 mayor, to the presiding officer of the governing body of the city or  
21 town.

22           SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
23 Beverage Code, are repealed.

24           SECTION 8. This Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick  
Speaker of the House of Representatives

4/20/05  
(date)

Sir:

We, your COMMITTEE ON ELECTIONS

to whom was referred H.B. 1799 have had the same under consideration and beg to report back with the recommendation that it

- ☒ do pass, without amendment.
- ☐ do pass, with amendment(s).
- ☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- ☒ yes ☐ no A fiscal note was requested.
- ☐ yes ☒ no A criminal justice policy impact statement was requested.
- ☐ yes ☒ no An equalized educational funding impact statement was requested.
- ☐ yes ☒ no An actuarial analysis was requested.
- ☐ yes ☒ no A water development policy impact statement was requested.
- ☐ yes ☒ no A tax equity note was requested.
- ☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor \_\_\_\_\_

Joint Sponsors: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Co-Sponsors: \_\_\_\_\_

The measure was reported from Committee by the following vote:

|                   | AYE | NAY | PNV | ABSENT |
|-------------------|-----|-----|-----|--------|
| Denny, Chairman   | X   |     |     |        |
| Bohac, Vice-chair | X   |     |     |        |
| Anchia            | X   |     |     |        |
| Anderson          | X   |     |     |        |
| Hughes            | X   |     |     |        |
| Jones, J.         | X   |     |     |        |
| Smith, T.         | X   |     |     |        |
|                   |     |     |     |        |
|                   |     |     |     |        |
|                   |     |     |     |        |
|                   |     |     |     |        |
|                   |     |     |     |        |
|                   |     |     |     |        |
|                   |     |     |     |        |
|                   |     |     |     |        |

Total 7 aye  
0 nay  
0 present, not voting  
0 absent

CHAIR Mary Denny

## **BILL ANALYSIS**

H.B. 1799  
By: Denny  
Elections  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Under current law, a sizable portion of Texas election law exists outside of the Election Code. During the interim period between the 78th and 79th legislative sessions, the Elections Committee reviewed those statutes relating to election law that are not in the Election Code and held hearings relating to moving these statutes. During these interim hearings, testimony revealed that it would be advantageous to move provisions relating to local option liquor elections from the Alcoholic Beverage Code into the Election Code. Although the Texas Alcoholic Beverage Commission regulates alcohol, this agency does not have expert knowledge regarding the administration of elections and redirects most, if not all, questions regarding local option liquor elections to the Elections Division of the Secretary of State. As a result of this study, the Elections Committee recommended that these provisions be recodified into the Election Code to ease the burden on the agencies and on the local election officials responsible for administering the local option elections. House Bill 1799 transfers laws governing the holding of local option elections regarding alcoholic beverages from the Alcoholic Beverage Code to the Election Code and makes nonsubstantive revisions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

House Bill 1799 amends the Election and Alcoholic Beverage Codes by repealing provisions in the Alcoholic Beverage Code relating to local option elections for the sale of alcoholic beverages and adding those provisions to the Election Code.

The bill adds provisions to the Alcoholic Beverage Code clarifying that provisions relating to local option liquor elections that refer to the

- county,
- commissioners court,
- county clerk or county voter registrar, or
- county judge,

are considered to refer to the city or town or applicable governing body or officer of the city or town.

### **EFFECTIVE DATE**

September 1, 2005.

## SUMMARY OF COMMITTEE ACTION

HB 1799

April 13, 2005      2:00PM      or upon final adjourn./recess

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Considered in public hearing

Testimony taken in committee (See attached witness list.)

Left pending in committee

April 20, 2005      2:00PM      or upon final adjourn./recess

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Considered in public hearing

Reported favorably without amendment(s)

2

WITNESS LIST

HB 1799  
HOUSE COMMITTEE REPORT  
Elections Committee

April 13, 2005 - 2:00PM or upon final adjourn./recess

On: McGeehan, Ann (TX Secretary of State- Elections)



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 4, 2005**

**TO:** Honorable Mary Denny, Chair, House Committee on Elections

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** HB1799 by Denny (Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), **As Introduced**

|   |
|---|
| <b>No fiscal implication to the State is anticipated.</b> |
|---|

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 458 Alcoholic Beverage Commission

**LBB Staff:** JOB, DLBa

4

2ND READING  
ENGROSSMENT

By: Denny

H.B. No. 1799

A BILL TO BE ENTITLED

AN ACT

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF

ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of

1 a provision of that code, including Chapter 101, Alcoholic Beverage  
2 Code, apply to a violation of a provision of this chapter.

3 [Sections 501.004-501.020 reserved for expansion]

4 SUBCHAPTER B. MANNER OF CALLING ELECTION

5 Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
6 the required number of voters of a county, justice precinct, or  
7 municipality in the county, the commissioners court shall order a  
8 local option election in the political subdivision to determine  
9 whether the sale of alcoholic beverages of one or more of the  
10 various types and alcoholic contents shall be prohibited or  
11 legalized in the political subdivision.

12 Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
13 TO HOLD ELECTION. (a) A political subdivision must have been in  
14 existence for at least 18 months before a local option election to  
15 legalize or prohibit the sale of liquor in the political  
16 subdivision may be held.

17 (b) The political subdivision must include substantially  
18 all the area encompassed by the political subdivision at the time of  
19 its creation and may include any other area subsequently annexed by  
20 or added to the political subdivision.

21 (c) This section does not apply to a municipality  
22 incorporated before December 1, 1971.

23 Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
24 qualified voters of any county, justice precinct, or municipality  
25 file a written application and provide proof of publication in a  
26 newspaper of general circulation in that political subdivision, the  
27 county clerk of the county shall issue to the applicants a petition

1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be

1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and

1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13               (1) clearly stated in the petition; and

14               (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter

1 registrar of the county shall check the names of the signers of  
2 petitions and the voting precincts in which the signers reside to  
3 determine whether the signers were qualified voters of the county,  
4 justice precinct, or municipality at the time the petition was  
5 issued. The political subdivision may use a statistical sampling  
6 method to verify the signatures, except that on written request  
7 from a citizen of the political subdivision for which an election is  
8 sought, the political subdivision shall verify each signature on  
9 the petition. The citizen making the request shall pay the  
10 reasonable cost of the verification. The registrar shall certify  
11 to the commissioners court the number of qualified voters signing  
12 the petition.

13 (b) A petition signature may not be counted unless the  
14 signature is the actual signature of the purported signer and the  
15 petition:

16 (1) contains in addition to the signature:

17 (A) the signer's printed name;

18 (B) the signer's date of birth;

19 (C) if the territory from which signatures must  
20 be obtained is situated in more than one county, the county of  
21 registration;

22 (D) the signer's residence address; and

23 (E) the date of signing; and

24 (2) complies with any other applicable requirements  
25 prescribed by law.

26 (c) The use of ditto marks or abbreviations does not  
27 invalidate a signature if the required information is reasonably

1 ascertainable.

2 (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7 (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9 (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19 Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27 (1) 35 percent of the registered voters in the



1 subdivision for a ballot issue that permits voting for or against:

2 (A) "The legal sale of all alcoholic beverages  
3 for off-premise consumption only.";

4 (B) "The legal sale of all alcoholic beverages  
5 except mixed beverages.";

6 (C) "The legal sale of all alcoholic beverages  
7 including mixed beverages."; or

8 (D) "The legal sale of mixed beverages.";

9 (2) 25 percent of the registered voters in the  
10 political subdivision who voted in the most recent general election  
11 for a ballot issue that permits voting for or against "The legal  
12 sale of wine on the premises of a holder of a winery permit."; or

13 (3) 35 percent of the registered voters in the  
14 political subdivision who voted in the most recent gubernatorial  
15 election for an election on any other ballot issue.

16 (b) Voters whose names appear on the list of registered  
17 voters with the notation "S," or a similar notation, shall be  
18 excluded from the computation of the number of registered voters of  
19 a particular territory.

20 Sec. 501.033. RECORD IN MINUTES. The date a petition is  
21 presented, the names of the signers, and the action taken with  
22 respect to the petition shall be entered in the minutes of the  
23 commissioners court.

24 Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)  
25 The election order must state in its heading and text whether the  
26 local option election to be held is for the purpose of prohibiting  
27 or legalizing the sale of the alcoholic beverages set out in the

1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."

1           (8) "The legal sale of mixed beverages."

2           (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."

4           (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."

6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:

10           (1) "The legal sale of beer for off-premise  
11 consumption only."

12           (2) "The legal sale of beer."

13           (3) "The legal sale of beer and wine for off-premise  
14 consumption only."

15           (4) "The legal sale of beer and wine."

16           (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."

18           (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."

20           (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."

22           (8) "The legal sale of mixed beverages."

23           (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."

25           (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."

27           (d) In an area where the sale of all alcoholic beverages

1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4           (1) "The legal sale of beer for off-premise  
5 consumption only."

6           (2) "The legal sale of beer."

7           (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9           (4) "The legal sale of beer and wine."

10           (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12           (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14           (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16           (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21           (1) "The legal sale of beer for off-premise  
22 consumption only."

23           (2) "The legal sale of beer."

24           (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26           (4) "The legal sale of beer and wine."

27           (5) "The legal sale of wine on the premises of a holder

1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed

1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election

1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4           (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8           (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12       Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17           (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21           (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25           (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27           (e) A person who violates Subsection (d) commits an offense.



1 An offense under this subsection is a misdemeanor punishable by:

2 (1) a fine of not less than \$200 nor more than \$500;

3 (2) confinement in the county jail for not more than 30  
4 days; or

5 (3) both the fine and confinement.

6 Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

7 This section applies only to an election to permit or prohibit the  
8 legal sale of alcoholic beverages of one or more of the various  
9 types and alcoholic contents in a municipality that is located in  
10 more than one county.

11 (b) An election to which this section applies shall be  
12 conducted by the municipality instead of the counties. For the  
13 purposes of an election conducted under this section, a reference  
14 in this chapter to:

15 (1) the county is considered to refer to the  
16 municipality;

17 (2) the commissioners court is considered to refer to  
18 the governing body of the municipality;

19 (3) the county clerk or voter registrar is considered  
20 to refer to the secretary of the municipality or, if the  
21 municipality does not have a secretary, to the person performing  
22 the functions of a secretary of the municipality; and

23 (4) the county judge is considered to refer to the  
24 mayor of the municipality or, if the municipality does not have a  
25 mayor, to the presiding officer of the governing body of the  
26 municipality.

27 (c) The municipality shall pay the expense of the election.

1        (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4        [Sections 501.110-501.150 reserved for expansion]

5        SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6        Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter.

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25           (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27           (2) in an election described by Subsection (c), less

1 than a majority of the votes cast favor the issue.

2 Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
3 commissioners court declaring the result of the election is prima  
4 facie evidence that all provisions of law have been complied with in  
5 giving notice of and holding the election, counting and returning  
6 the votes, and declaring the result of the election.

7 Sec. 501.153. CERTIFICATION OF RESULT. Not later than the  
8 third day after the date the result of a local option election has  
9 been declared, the county clerk shall certify the result to the  
10 secretary of state and the commission. The clerk may not charge a  
11 fee for this service.

12 Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A  
13 commissioners court order declaring the result of a local option  
14 election and prohibiting the sale of any or all types of alcoholic  
15 beverages must be published by posting the order at three public  
16 places in the county or other political subdivision in which the  
17 election was held.

18 (b) The posting of the order shall be recorded in the  
19 minutes of the commissioners court by the county judge. The entry  
20 in the minutes or a copy certified under the hand and seal of the  
21 county clerk is prima facie evidence of the posting.

22 Sec. 501.155. ELECTION CONTEST. (a) The enforcement of  
23 local option laws in the political subdivision in which an election  
24 is being contested is not suspended during an election contest.

25 (b) The result of an election contest finally settles all  
26 questions relating to the validity of that election. A person may  
27 not call the legality of that election into question again in any

1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code [~~251.14 of this code~~],  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:

1           (c) The provisions of Section 501.107, Election Code  
2 ~~[251.40 of this code]~~ relating to the payment of local option  
3 election expenses shall apply to elections held in a territory that  
4 is defined in accordance with Subsection (a) of this section.

5           SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
6 Code, is amended by adding Section 251.82 to read as follows:

7           Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
8 purposes of an election conducted under Section 501.109, Election  
9 Code, a reference in this code:

10                 (1) to the county is considered to refer to the city or  
11 town;

12                 (2) to the commissioners court is considered to refer  
13 to the governing body of the city or town;

14                 (3) to the county clerk or registrar of voters is  
15 considered to refer to the secretary of the city or town or, if the  
16 city or town does not have a secretary, to the person performing the  
17 functions of a secretary of the city or town; and

18                 (4) to the county judge is considered to refer to the  
19 mayor of the city or town or, if the city or town does not have a  
20 mayor, to the presiding officer of the governing body of the city or  
21 town.

22           SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
23 Beverage Code, are repealed.

24           SECTION 8. This Act takes effect September 1, 2005.

# HOUSE ENGROSSMENT

By: Denny

H.B. No. 1799

## A BILL TO BE ENTITLED

### AN ACT

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

#### TITLE 17. LOCAL OPTION ELECTIONS

#### CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF

#### ALCOHOLIC BEVERAGES

#### SUBCHAPTER A. GENERAL PROVISIONS

#### Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of

1 a provision of that code, including Chapter 101, Alcoholic Beverage  
2 Code, apply to a violation of a provision of this chapter.

3 [Sections 501.004-501.020 reserved for expansion]

4 SUBCHAPTER B. MANNER OF CALLING ELECTION

5 Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
6 the required number of voters of a county, justice precinct, or  
7 municipality in the county, the commissioners court shall order a  
8 local option election in the political subdivision to determine  
9 whether the sale of alcoholic beverages of one or more of the  
10 various types and alcoholic contents shall be prohibited or  
11 legalized in the political subdivision.

12 Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
13 TO HOLD ELECTION. (a) A political subdivision must have been in  
14 existence for at least 18 months before a local option election to  
15 legalize or prohibit the sale of liquor in the political  
16 subdivision may be held.

17 (b) The political subdivision must include substantially  
18 all the area encompassed by the political subdivision at the time of  
19 its creation and may include any other area subsequently annexed by  
20 or added to the political subdivision.

21 (c) This section does not apply to a municipality  
22 incorporated before December 1, 1971.

23 Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
24 qualified voters of any county, justice precinct, or municipality  
25 file a written application and provide proof of publication in a  
26 newspaper of general circulation in that political subdivision, the  
27 county clerk of the county shall issue to the applicants a petition

1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be



1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and

1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13               (1) clearly stated in the petition; and

14               (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter

registrar of the county shall check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county, justice precinct, or municipality at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.

(b) A petition signature may not be counted unless the signature is the actual signature of the purported signer and the petition:

(1) contains in addition to the signature:

(A) the signer's printed name;

(B) the signer's date of birth;

(C) if the territory from which signatures must be obtained is situated in more than one county, the county of registration;

(D) the signer's residence address; and

(E) the date of signing; and

(2) complies with any other applicable requirements prescribed by law.

(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably

1 ascertainable.

2 (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7 (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9 (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19 Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27 (1) 35 percent of the registered voters in the

subdivision for a ballot issue that permits voting for or against:

(A) "The legal sale of all alcoholic beverages for off-premise consumption only.";

(B) "The legal sale of all alcoholic beverages except mixed beverages.";

(C) "The legal sale of all alcoholic beverages including mixed beverages."; or

(D) "The legal sale of mixed beverages.";

(2) 25 percent of the registered voters in the political subdivision who voted in the most recent general election for a ballot issue that permits voting for or against "The legal sale of wine on the premises of a holder of a winery permit."; or

(3) 35 percent of the registered voters in the political subdivision who voted in the most recent gubernatorial election for an election on any other ballot issue.

(b) Voters whose names appear on the list of registered voters with the notation "S," or a similar notation, shall be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a) The election order must state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the

1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."

1           (8) "The legal sale of mixed beverages."

2           (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."

4           (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."

6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:

10           (1) "The legal sale of beer for off-premise  
11 consumption only."

12           (2) "The legal sale of beer."

13           (3) "The legal sale of beer and wine for off-premise  
14 consumption only."

15           (4) "The legal sale of beer and wine."

16           (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."

18           (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."

20           (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."

22           (8) "The legal sale of mixed beverages."

23           (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."

25           (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."

27           (d) In an area where the sale of all alcoholic beverages

1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4 (1) "The legal sale of beer for off-premise  
5 consumption only."

6 (2) "The legal sale of beer."

7 (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9 (4) "The legal sale of beer and wine."

10 (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12 (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14 (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16 (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21 (1) "The legal sale of beer for off-premise  
22 consumption only."

23 (2) "The legal sale of beer."

24 (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26 (4) "The legal sale of beer and wine."

27 (5) "The legal sale of wine on the premises of a holder



1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed

1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election

1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4 (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8 (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12 Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17 (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21 (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25 (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27 (e) A person who violates Subsection (d) commits an offense.

An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$200 nor more than \$500;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) An election to which this section applies shall be conducted by the municipality instead of the counties. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

1       (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4       [Sections 501.110-501.150 reserved for expansion]

5       SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6       Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter. .

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25               (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27               (2) in an election described by Subsection (c), less

1 than a majority of the votes cast favor the issue.

2 Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
3 commissioners court declaring the result of the election is prima  
4 facie evidence that all provisions of law have been complied with in  
5 giving notice of and holding the election, counting and returning  
6 the votes, and declaring the result of the election.

7 Sec. 501.153. CERTIFICATION OF RESULT. Not later than the  
8 third day after the date the result of a local option election has  
9 been declared, the county clerk shall certify the result to the  
10 secretary of state and the commission. The clerk may not charge a  
11 fee for this service.

12 Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A  
13 commissioners court order declaring the result of a local option  
14 election and prohibiting the sale of any or all types of alcoholic  
15 beverages must be published by posting the order at three public  
16 places in the county or other political subdivision in which the  
17 election was held.

18 (b) The posting of the order shall be recorded in the  
19 minutes of the commissioners court by the county judge. The entry  
20 in the minutes or a copy certified under the hand and seal of the  
21 county clerk is prima facie evidence of the posting.

22 Sec. 501.155. ELECTION CONTEST. (a) The enforcement of  
23 local option laws in the political subdivision in which an election  
24 is being contested is not suspended during an election contest.

25 (b) The result of an election contest finally settles all  
26 questions relating to the validity of that election. A person may  
27 not call the legality of that election into question again in any

1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS ~~[ELECTIONS]~~

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code ~~[251.14 of this code]~~,  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:



(c) The provisions of Section 501.107, Election Code  
~~[251.40 of this code]~~ relating to the payment of local option  
election expenses shall apply to elections held in a territory that  
is defined in accordance with Subsection (a) of this section.

SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
Code, is amended by adding Section 251.82 to read as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
purposes of an election conducted under Section 501.109, Election  
Code, a reference in this code:

(1) to the county is considered to refer to the city or  
town;

(2) to the commissioners court is considered to refer  
to the governing body of the city or town;

(3) to the county clerk or registrar of voters is  
considered to refer to the secretary of the city or town or, if the  
city or town does not have a secretary, to the person performing the  
functions of a secretary of the city or town; and

(4) to the county judge is considered to refer to the  
mayor of the city or town or, if the city or town does not have a  
mayor, to the presiding officer of the governing body of the city or  
town.

SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
Beverage Code, are repealed.

SECTION 8. This Act takes effect September 1, 2005.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 4, 2005**

**TO: Honorable Mary Denny, Chair, House Committee on Elections**

**FROM: John S. O'Brien, Deputy Director, Legislative Budget Board**

**IN RE: HB1799 by Denny (Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), As Introduced**

|   |
|---|
| <b>No fiscal implication to the State is anticipated.</b> |
|---|

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies: 307 Secretary of State, 458 Alcoholic Beverage Commission**

**LBB Staff: JOB, DLBa**

By: Denny (Senate Sponsor - Fraser) H.B. No. 1799  
(In the Senate - Received from the House May 10, 2005;  
May 12, 2005, read first time and referred to Committee on Business  
and Commerce; May 19, 2005, reported adversely, with favorable  
Committee Substitute by the following vote: Yeas 6, Nays 0;  
May 19, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 1799 By: Lucio

A BILL TO BE ENTITLED  
AN ACT

relating to a transfer and nonsubstantive revision of laws  
governing the holding of local option elections regarding alcoholic  
beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17  
to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS  
CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF  
ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission,"  
"liquor," "mixed beverage," and "wine and vinous liquor" have the  
meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section  
1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section  
11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law  
to an election or a local option election held under Chapter 251,  
Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of  
the Alcoholic Beverage Code that relate generally to a violation of  
a provision of that code, including Chapter 101, Alcoholic Beverage  
Code, apply to a violation of a provision of this chapter.

[Sections 501.004-501.020 reserved for expansion]

SUBCHAPTER B. MANNER OF CALLING ELECTION

Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
the required number of voters of a county, justice precinct, or  
municipality in the county, the commissioners court shall order a  
local option election in the political subdivision to determine  
whether the sale of alcoholic beverages of one or more of the  
various types and alcoholic contents shall be prohibited or  
legalized in the political subdivision.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
TO HOLD ELECTION. (a) A political subdivision must have been in  
existence for at least 18 months before a local option election to  
legalize or prohibit the sale of liquor in the political  
subdivision may be held.

(b) The political subdivision must include substantially  
all the area encompassed by the political subdivision at the time of  
its creation and may include any other area subsequently annexed by  
or added to the political subdivision.

(c) This section does not apply to a municipality  
incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
qualified voters of any county, justice precinct, or municipality  
file a written application and provide proof of publication in a  
newspaper of general circulation in that political subdivision, the  
county clerk of the county shall issue to the applicants a petition  
to be circulated among the qualified voters of the political  
subdivision for the signatures of those qualified voters who desire  
that a local option election be called for the purpose of  
determining whether the sale of alcoholic beverages of one or more

of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

(b) Not later than the fifth day after the date the petition is issued, the county clerk shall notify the commission and the secretary of state that the petition has been issued.

Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT. (a) An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Prohibit."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE. (a) An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Legalize."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.026. PETITION REQUIREMENTS. A petition must show the date the petition is issued by the county clerk and be serially numbered. Each page of a petition must bear the same date and serial number and the actual seal of the county clerk rather than a facsimile of that seal.

Sec. 501.027. HEADING AND STATEMENT ON PETITION TO PROHIBIT. (a) Each page of the petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Prohibit."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.028. HEADING AND STATEMENT ON PETITION TO LEGALIZE. (a) Each page of the petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Legalize."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a) A person commits an offense if the person misrepresents the purpose or effect of a petition issued under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Sec. 501.030. COPIES OF PETITION. (a) The county clerk

shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or municipality. Each copy must bear the date, number, and seal on each page as required on the original petition.

(b) The county clerk shall keep a copy of each petition and a record of the applicants for the petition.

Sec. 501.031. VERIFICATION OF PETITION. (a) The voter registrar of the county shall check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county, justice precinct, or municipality at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.

(b) A petition signature may not be counted unless the signature is the actual signature of the purported signer and the petition:

(1) contains in addition to the signature:

(A) the signer's printed name;

(B) the signer's date of birth;

(C) if the territory from which signatures must be obtained is situated in more than one county, the county of registration;

(D) the signer's residence address; and

(E) the date of signing; and

(2) complies with any other applicable requirements prescribed by law.

(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

(e) The signature is the only entry on the petition that is required to be in the signer's handwriting.

(f) A signer may withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. A signer may not withdraw the signature from a petition on or after the date the petition is received by the registrar. A withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. The withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, shall order a local option election to be held on the issue set out in the petition if the petition is filed with the voter registrar not later than the 60th day after the date the petition is issued and bears the actual signatures of a number of qualified voters of the political subdivision equal to at least:

(1) 35 percent of the registered voters in the subdivision for a ballot issue that permits voting for or against:

(A) "The legal sale of all alcoholic beverages for off-premise consumption only.";

(B) "The legal sale of all alcoholic beverages except mixed beverages.";

(C) "The legal sale of all alcoholic beverages including mixed beverages."; or

(D) "The legal sale of mixed beverages.";  
 (2) 25 percent of the registered voters in the political subdivision who voted in the most recent general election for a ballot issue that permits voting for or against "The legal sale of wine on the premises of a holder of a winery permit."; or

(3) 35 percent of the registered voters in the political subdivision who voted in the most recent gubernatorial election for an election on any other ballot issue.

(b) Voters whose names appear on the list of registered voters with the notation "S," or a similar notation, shall be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a) The election order must state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the issue recited in the application and petition.

(b) The order must state the issue to be voted on in the election.

Sec. 501.035. ISSUES. (a) In the ballot issues prescribed by this section, "wine" is limited to vinous beverages that do not contain more than 17 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. For local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) In an area where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications, the ballot shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(c) In an area where the sale of all alcoholic beverages including mixed beverages has been legalized, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(d) In an area where the sale of all alcoholic beverages except mixed beverages has been legalized, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of wine on the premises of a holder of a winery permit."

(e) In an area where the sale of beverages containing alcohol not in excess of 17 percent by volume has been legalized, and those of higher alcoholic content are prohibited, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of wine on the premises of a holder of a winery permit."

(f) In an area where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(g) In an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premise consumption, no alcoholic beverage may be consumed on any licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option election does not affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) In any local option election in which any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized before the election remains legal without regard to the outcome of that election on the question of mixed beverages. If the sale of mixed beverages by food and beverage certificate holders was legalized before a local option election on the general sale of mixed beverages, the sale of mixed beverages in an establishment that holds a food and beverage certificate remains legal without regard to the outcome of the election on the general sale of mixed beverages.

Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners court election order is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make the order valid.

Sec. 501.038. FREQUENCY OF ELECTIONS. A local option election on a particular issue may not be held in a political subdivision until after the first anniversary of the most recent local option election in that political subdivision on that issue.

[Sections 501.039-501.100 reserved for expansion]

## SUBCHAPTER C. HOLDING OF ELECTION

6-1                   Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
 6-2 provided by this chapter, the officers holding a local option  
 6-3 election shall hold the election in the manner provided by the other  
 6-4 provisions of this code.

6-5                   Sec. 501.102. ELECTION PRECINCTS. (a) County election  
 6-6 precincts shall be used for a local option election to be held in an  
 6-7 entire county or in a justice precinct.

6-8                   (b) Election precincts established by the governing body of  
 6-9 the municipality for its municipal elections shall be used for a  
 6-10 local option election to be held in a municipality. If the  
 6-11 governing body has not established precincts for its municipal  
 6-12 elections, the commissioners court shall prescribe the election  
 6-13 precincts for the local option election under the law governing  
 6-14 establishment of precincts for municipal elections.

6-15                   Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
 6-16 shall be held at the customary polling place in each election  
 6-17 precinct. If the customary polling place is not available, the  
 6-18 commissioners court shall designate another polling place.

6-19                   (b) The notice for the election shall state the polling  
 6-20 place for each election precinct and the precinct numbers of county  
 6-21 precincts included in each municipal election precinct if the  
 6-22 election is for a municipality.

6-23                   Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
 6-24 is conducted using printed ballots, the county clerk shall furnish  
 6-25 the presiding judge of each election precinct with at least the  
 6-26 number of ballots equal to the number of registered voters in the  
 6-27 precinct plus 10 percent of that number of voters.

6-28                   Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
 6-29 appear on the ballot for an election ordered by the commissioners  
 6-30 court must be the same as the issue applied for and set out in the  
 6-31 petition.

6-32                   (b) The issue appropriate to the election shall be printed  
 6-33 on the ballot in the exact language stated in Section 501.035.

6-34                   Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
 6-35 option election shall be counted and the report of the election  
 6-36 submitted to the commissioners court within 24 hours after the time  
 6-37 the polls close.

6-38                   Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
 6-39 county shall pay the expense of holding a local option election  
 6-40 authorized by this chapter in the county, justice precinct, or  
 6-41 municipality in that county except that:

6-42                   (1) if an election is to be held only within the  
 6-43 corporate limits of a municipality located wholly within the  
 6-44 county, the county may require the municipality to reimburse the  
 6-45 county for all or part of the expenses of holding the local option  
 6-46 election;

6-47                   (2) county payment of the expense of an election to  
 6-48 legalize the sale of alcoholic beverages is limited to the holding  
 6-49 of one election in a political subdivision during a one-year  
 6-50 period; and

6-51                   (3) county payment of the expense of an election to  
 6-52 prohibit the sale of alcoholic beverages is limited to the holding  
 6-53 of one election in a political subdivision during a one-year  
 6-54 period.

6-55                   Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
 6-56 If a county is not required to pay the expense of a local option  
 6-57 election under Section 501.107, the county clerk shall require the  
 6-58 applicants for a petition for a local option election to make a  
 6-59 deposit before the issuance of the petition.

6-60                   (b) The deposit must be in the form of a cashier's check in  
 6-61 an amount equal to 25 cents per voter listed on the current list of  
 6-62 registered voters residing in the county, justice precinct, or  
 6-63 municipality where the election is to be held.

6-64                   (c) The money received shall be deposited in the county's  
 6-65 general fund. A refund may not be made to the applicants regardless  
 6-66 of whether the petition is returned to the county clerk or the  
 6-67 election is ordered.

6-68                   (d) The county clerk may not issue a petition to the  
 6-69



applicants unless a deposit required by this chapter is made.

(e) A person who violates Subsection (d) commits an offense. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$200 nor more than \$500;  
(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a) This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) An election to which this section applies shall be conducted by the municipality instead of the counties. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

(d) An action to contest the election under Section 501.155 may be brought in the district court of any county in which the municipality is located.

[Sections 501.110-501.150 reserved for expansion]

#### SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

Sec. 501.151. DECLARATION OF RESULT. (a) On completing the canvass of the election returns, the commissioners court shall make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law.

(b) In a prohibitory election, if a majority of the votes cast do not favor the issue "The legal sale . . .," the court's order must state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective on the 30th day after the date the order is entered. The prohibition remains in effect until changed by a subsequent local option election held under this chapter.

(c) In a legalization election, if a majority of the votes cast favor the issue "The legal sale . . .," the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option election held under this code.

(d) The local option status of a political subdivision does not change as a result of the election if:

(1) in an election described by Subsection (b), less than a majority of the votes cast do not favor the issue; and

(2) in an election described by Subsection (c), less than a majority of the votes cast favor the issue.

Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

Sec. 501.153. CERTIFICATION OF RESULT. Not later than the third day after the date the result of a local option election has been declared, the county clerk shall certify the result to the secretary of state and the commission. The clerk may not charge a fee for this service.

Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A commissioners court order declaring the result of a local option

election and prohibiting the sale of any or all types of alcoholic beverages must be published by posting the order at three public places in the county or other political subdivision in which the election was held.

(b) The posting of the order shall be recorded in the minutes of the commissioners court by the county judge. The entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of the posting.

Sec. 501.155. ELECTION CONTEST. (a) The enforcement of local option laws in the political subdivision in which an election is being contested is not suspended during an election contest.

(b) The result of an election contest finally settles all questions relating to the validity of that election. A person may not call the legality of that election into question again in any other suit or proceeding.

(c) If an election contest is not timely instituted, it is conclusively presumed that the election is valid and binding in all respects on all courts.

SECTION 2. The heading to Chapter 251, Alcoholic Beverage Code, is amended to read as follows:

CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

SECTION 3. Section 251.71, Alcoholic Beverage Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of this code:

(1) a reference to a local option election means an election held under Chapter 501, Election Code; and

(2) a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

SECTION 4. Section 251.72, Alcoholic Beverage Code, is amended to read as follows:

Sec. 251.72. CHANGE OF STATUS. Except as provided in Section 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 501.035, Election Code [~~251.14 of this code~~], until that status is changed by a subsequent local option election in the same authorized voting unit.

SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is amended to read as follows:

(c) The provisions of Section 501.107, Election Code, [~~251.40 of this code~~] relating to the payment of local option election expenses shall apply to elections held in a territory that is defined in accordance with Subsection (a) of this section.

SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage Code, is amended by adding Section 251.82 to read as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the purposes of an election conducted under Section 501.109, Election Code, a reference in this code:

(1) to the county is considered to refer to the city or town;

(2) to the commissioners court is considered to refer to the governing body of the city or town;

(3) to the county clerk or registrar of voters is considered to refer to the secretary of the city or town or, if the city or town does not have a secretary, to the person performing the functions of a secretary of the city or town; and

(4) to the county judge is considered to refer to the mayor of the city or town or, if the city or town does not have a mayor, to the presiding officer of the governing body of the city or town.

SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic Beverage Code, are repealed.

SECTION 8. The saving provisions of Section 311.031, Government Code, apply to:

(1) the repeal of Subchapters A, B, and C, Chapter 251, Alcoholic Beverage Code, by this Act as if those provisions were statutes to which Section 311.031 applies; and

9-1 (2) the enactment of Title 17, Election Code, by this  
9-2 Act as if this Act were a code governed by Chapter 311, Government  
9-3 Code.  
9-4 SECTION 9. This Act takes effect September 1, 2005.

\* \* \* \* \*

9-5

FAVORABLY AS SUBSTITUTED  
SENATE COMMITTEE REPORT ON

SB SCR SJR SR HB HCR HJR 1799  
By Denny Fraser  
(Author/Senate Sponsor)  
May 19, 2005  
(date)

We, your Committee on BUSINESS AND COMMERCE, to which was referred the attached measure,  
have on May 17, 2005, had the same under consideration and I am instructed to report it  
(date of hearing)  
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed  
☒ the caption remained the same as original measure  
☐ the caption changed with adoption of the substitute

☐ do pass as substituted, and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

|                                    | YEA                                 | NAY | ABSENT                              | PNV |
|------------------------------------|-------------------------------------|-----|-------------------------------------|-----|
| Senator Troy Fraser, Chairman      | <input checked="" type="checkbox"/> |     |                                     |     |
| Senator Kip Averitt, Vice-Chairman |                                     |     | <input checked="" type="checkbox"/> |     |
| Senator Ken Armbrister             |                                     |     | <input checked="" type="checkbox"/> |     |
| Senator Kim Brimer                 | <input checked="" type="checkbox"/> |     |                                     |     |
| Senator John Carona                |                                     |     | <input checked="" type="checkbox"/> |     |
| Senator Kevin Eltife               | <input checked="" type="checkbox"/> |     |                                     |     |
| Senator Craig Estes                | <input checked="" type="checkbox"/> |     |                                     |     |
| Senator Eddie Lucio                | <input checked="" type="checkbox"/> |     |                                     |     |
| Senator Leticia Van de Putte       | <input checked="" type="checkbox"/> |     |                                     |     |
|                                    |                                     |     |                                     |     |
| TOTAL VOTES                        | 6                                   |     | 3                                   |     |

COMMITTEE ACTION

S260 Considered in public hearing

S270 Testimony taken

John Baker  
COMMITTEE CLERK

Denny Fraser  
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute  
Retain one copy of this form for Committee files

## **BILL ANALYSIS**

Senate Research Center  
79R65 DRH-D

H.B. 1799  
By: Denny (Fraser)  
Business & Commerce  
5/14/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Under current law, a sizable portion of Texas election law exists outside of the Election Code. During the interim period between the 78th and 79th legislative sessions, the House Elections Committee reviewed those statutes relating to election law that are not in the Election Code and held hearings relating to moving these statutes. During these interim hearings, testimony revealed that it would be advantageous to move provisions relating to local option liquor elections from the Alcoholic Beverage Code into the Election Code. Although the Texas Alcoholic Beverage Commission regulates alcohol, this agency does not have expert knowledge regarding the administration of elections and redirects most, if not all, questions regarding local option liquor elections to the Elections Division of the Secretary of State. As a result of this study, the Elections Committee recommended that these provisions be recodified into the Election Code to ease the burden on the agencies and on the local election officials responsible for administering the local option elections. H.B. 1799 transfers laws governing the holding of local option elections regarding alcoholic beverages from the Alcoholic Beverage Code to the Election Code and makes nonsubstantive revisions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the Election Code, by adding Title 17, as follows:

#### **TITLE 17. LOCAL OPTION ELECTIONS**

##### **CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF ALCOHOLIC BEVERAGES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 501.001. DEFINITIONS. Defines "alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," "wine and vinous liquor," "municipality," and "premises."

Sec. 501.002. REFERENCES IN OTHER LAW. Provides that a reference in law to an election or a local option election held under Chapter 251 (Local Option Elections), Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. Provides that the enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of a provision of that code, including Chapter 101 (General Criminal Provisions), Alcoholic Beverage Code, apply to a violation of a provision of this chapter.

[Reserves Sections 501.004-501.020 for expansion.]

##### **SUBCHAPTER B. MANNER OF CALLING ELECTION**

Sec. 501.021. ELECTION TO BE HELD. Requires the commissioners court, on proper petition by the required number of voters of a county, justice precinct, or municipality in

the county, to order a local option election in the political subdivision to determine whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION TO HOLD ELECTION. (a) Requires a political subdivision to have been in existence for at least 18 months before a local option election to legalize or prohibit the sale of liquor in the political subdivision may be held.

(b) Requires the political subdivision to include substantially all the area encompassed by the political subdivision at the time of its creation and authorizes it to include any other area subsequently annexed by or added to the political subdivision.

(c) Provides that this section does not apply to a municipality incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) Requires the county clerk of the county to issue a petition regarding a local option election regarding the sale of alcoholic beverages to specific individuals, if 10 or more qualified voters of any county, justice precinct, or municipality file a written application and provide proof of publication in a newspaper of general circulation in that political subdivision.

(b) Requires the county clerk to notify the Texas Alcoholic Beverage Commission (TABC) and the secretary of state that the petition has been issued, not later than the fifth day after the date the petition is issued.

Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT. Sets forth the requirements for the application for a petition seeking an election to prohibit the sale of alcoholic beverages.

Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE. Sets forth requirements for the application for a petition seeking to legalize the sale of alcoholic beverages.

Sec. 501.026. PETITION REQUIREMENTS. Requires a petition to show the date the petition is issued by the county clerk, be serially numbered, and bear the actual seal of the county clerk on each page.

Sec. 501.027. HEADING AND STATEMENT ON PETITION TO PROHIBIT. Sets forth requirements for the contents of the petition for a local option election seeking to prohibit the sale of alcoholic beverages.

Sec. 501.028. HEADING AND STATEMENT ON PETITION TO LEGALIZE. Sets forth requirements for the petition for a local option election seeking to legalize the sale of alcoholic beverages.

Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. Provides that a person commits Class B misdemeanor if the person misrepresents the purpose or effect of a petition issued under this chapter.

Sec. 501.030. COPIES OF PETITION. Requires the county clerk to supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or municipality. Requires each copy to bear the date, number, and seal on each page as required on the original petition. Requires the county clerk to keep a copy of each petition and a record of the applicants for the petition.

Sec. 501.031. VERIFICATION OF PETITION. (a) Requires the voter registrar of the county to check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county,

justice precinct, or municipality at the time the petition was issued. Authorizes the political subdivision to use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision is required verify each signature on the petition. Requires the citizen making the request to pay the reasonable cost of the verification. Requires the registrar to certify to the commissioners court the number of qualified voters signing the petition.

(b) Prohibits a petition signature from being counted unless it is the actual signature of the person and certain additional information is provided.

(c) Provides that the use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) Provides that the omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. Provides that the omission of the zip code from the address does not invalidate a signature.

(e) Provides that the signature is the only entry on the petition that is required to be in the signer's handwriting.

(f) Authorizes a signer to withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. Prohibits a signer from withdrawing the signature from a petition on or after the date the petition is received by the registrar. Provides that a withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. Provides that the withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. Requires the commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, to order a local option election to be held on the issue set out in the petition if the petition meets specific requirements. Requires voters whose names appear on the list of registered voters with the notation "S," or a similar notation, to be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. Requires specific information regarding the petition to be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. Requires the election order to include specific information.

Sec. 501.035. ISSUES. (a) Provides that in the ballot issues prescribed by this section, "wine" is limited to vinous beverages that do not contain more than 17 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. Provides that for local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) Sets forth issues which the ballot is required to include in an area where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications.

(c) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of all alcoholic beverages including mixed beverages has been legalized.

(d) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of all alcoholic beverages except mixed beverages has been legalized.

(e) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of beverages containing alcohol not in excess of 17 percent by volume has been legalized, and those of higher alcoholic content are prohibited.

(f) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited.

(g) Provides that in an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premise consumption, no alcoholic beverage may be consumed on any licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) Provides that a local option election does not affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) Provides that in any local option election in which any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized before the election remains legal without regard to the outcome of that election on the question of mixed beverages. Provides that if the sale of mixed beverages by food and beverage certificate holders was legalized before a local option election on the general sale of mixed beverages, the sale of mixed beverages in an establishment that holds a food and beverage certificate remains legal without regard to the outcome of the election on the general sale of mixed beverages.

Sec. 501.037. EVIDENCE OF VALIDITY. Provides that the commissioners court election order is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make the order valid.

Sec. 501.038. FREQUENCY OF ELECTIONS. Prohibits a local option election on a particular issue from being held in a political subdivision until after the first anniversary of the most recent local option election in that political subdivision on that issue.

[Reserves Sections 501.039-501.100 for expansion]

#### SUBCHAPTER C. HOLDING OF ELECTION

Sec. 501.101. APPLICABILITY OF ELECTION CODE. Requires the officers holding a local option election to hold the election in the manner provided by the other provisions of this code, except as provided by this chapter.

Sec. 501.102. ELECTION PRECINCTS. (a) Requires county election precincts to be used for a local option election to be held in an entire county or in a justice precinct.

(b) Requires election precincts established by the governing body of the municipality for its municipal elections to be used for a local option election to be held in a municipality. Requires the commissioners court to prescribe the election precincts for the local option election under the law governing establishment of precincts for municipal elections, if the governing body has not established precincts for its municipal elections.



Sec. 501.103. POLLING PLACES; NOTICE. (a) Requires the election to be held at the customary polling place in each election precinct. Requires the commissioners court to designate another polling place if the customary polling place is not available.

(b) Requires the notice for the election to state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for a municipality.

Sec. 501.104. NUMBER OF BALLOTS FURNISHED. Requires the county clerk to furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of registered voters in the precinct plus 10 percent of that number of voters, if the election is conducted using printed ballots.

Sec. 501.105. ISSUE ON BALLOT. (a) Requires the issue ordered to appear on the ballot for an election ordered by the commissioners court to be the same as the issue applied for and set out in the petition.

(b) Requires the issue appropriate to the election to be printed on the ballot in the exact language stated in Section 501.035.

Sec. 501.106. TIME FOR VOTE TALLY. Requires the votes for a local option election to be counted and the report of the election submitted to the commissioners court within 24 hours after the time the polls close.

Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. Requires the county to pay the expense of holding a local option election authorized by this chapter in the county, justice precinct, or municipality in that county, unless certain exceptions are met.

Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a) Requires the county clerk to require the applicants for a petition for a local option election to make a deposit before the issuance of the petition if a county is not required to pay the expense of a local option election under Section 501.107.

(b) Requires the deposit to be in the form of a cashier's check in an amount equal to 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or municipality where the election is to be held.

(c) Requires the money received to be deposited in the county's general fund. Prohibits a refund from being made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) Prohibits the county clerk from issuing a petition to the applicants unless a deposit required by this chapter is made.

(e) Provides that a person who violates Subsection (d) commits an offense punishable in certain manners.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a) Provides that this section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) Requires an election to which this section applies to be conducted by the municipality instead of the counties. Sets forth references in this chapter for the purposes of an election conducted under this section.

(c) Requires the municipality to pay the expense of the election.

(d) Authorizes an action to contest the election under Section 501.155 to be brought in the district court of any county in which the municipality is located.

#### SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

Sec. 501.151. DECLARATION OF RESULT. (a) Requires the commissioners court to make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law on completing the canvass of the election returns.

(b) Requires the court's order, in a prohibitory election, if a majority of the votes cast do not favor a specific issue, to state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective on the 30th day after the date the order is entered. Provides that the prohibition remains in effect until changed by a subsequent local option election held under this chapter.

(c) Provides that in a legalization election, if a majority of the votes cast favor the specific issue, the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. Provides that the legalization remains in effect until changed by a subsequent local option election held under this code.

(d) Sets forth the situation in which the local option status of a political subdivision does not change.

Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. Provides that the order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

Sec. 501.153. CERTIFICATION OF RESULT. Requires the county clerk to certify the result to the secretary of state and TABC not later than the third day after the date the result of a local option election has been declared. Prohibits the clerk from charging a fee for this service.

Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) Requires a commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages to be published by posting the order at three public places in the county or other political subdivision in which the election was held.

(b) Requires the posting of the order to be recorded in the minutes of the commissioners court by the county judge. Provides that the entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of the posting.

Sec. 501.155. ELECTION CONTEST. (a) Provides that the enforcement of local option laws in the political subdivision in which an election is being contested is not suspended during an election contest.

(b) Provides that the result of an election contest finally settles all questions relating to the validity of that election. Prohibits a person from calling the legality of that election into question again in any other suit or proceeding.

(c) Provides that if an election contest is not timely instituted, it is conclusively presumed that the election is valid and binding in all respects on all courts.

SECTION 2. Amends the heading to Chapter 251, Alcoholic Beverage Code, to read as follows:

#### CHAPTER 251. LOCAL OPTION STATUS

SECTION 3. Amends Section 251.71, Alcoholic Beverage Code, by adding Subsection (e), as follows:

(e) Provides that for purposes of this code a reference to a local option election means an election held under Chapter 501, Election Code, and a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

SECTION 4. Amends Section 251.72, Alcoholic Beverage Code, to redesignate the reference to Section 251.14, Alcoholic Beverage Code, to Section 501.035, Election Code.

SECTION 5. Amends Section 251.80(c), Alcoholic Beverage Code, to redesignate the reference to Section 251.40, Alcoholic Beverage Code, to Section 501.107, Election Code.

SECTION 6. Amends Subchapter D, Chapter 251, Alcoholic Beverage Code, by adding Section 251.82, as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. Sets forth references in this code for the purposes of an election conducted under Section 501.109.

SECTION 7. Repealer: Subchapters A (Manner of Calling Election), B (Election), and C (Procedure Following Election), Chapter 251, Alcoholic Beverage Code.

SECTION 8. Effective date: September 1, 2005.

## **BILL ANALYSIS**

Senate Research Center  
79R18168 E

C.S.H.B. 1799  
By: Denny (Fraser)  
Business & Commerce  
5/18/2005  
Committee Report (Substituted)

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Under current law, a sizable portion of Texas election law exists outside of the Election Code. During the interim period between the 78th and 79th legislative sessions, the House Elections Committee reviewed those statutes relating to election law that are not in the Election Code and held hearings relating to moving these statutes. During these interim hearings, testimony revealed that it would be advantageous to move provisions relating to local option liquor elections from the Alcoholic Beverage Code into the Election Code. Although the Texas Alcoholic Beverage Commission regulates alcohol, this agency does not have expert knowledge regarding the administration of elections and redirects most, if not all, questions regarding local option liquor elections to the Elections Division of the Secretary of State. As a result of this study, the Elections Committee recommended that these provisions be recodified into the Election Code to ease the burden on the agencies and on the local election officials responsible for administering the local option elections.

C.S.H.B. 1799 transfers laws governing the holding of local option elections regarding alcoholic beverages from the Alcoholic Beverage Code to the Election Code and makes nonsubstantive revisions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the Election Code, by adding Title 17, as follows:

#### **TITLE 17. LOCAL OPTION ELECTIONS**

#### **CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF ALCOHOLIC BEVERAGES**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 501.001. DEFINITIONS. Defines "alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," "wine and vinous liquor," "municipality," and "premises."

Sec. 501.002. REFERENCES IN OTHER LAW. Provides that a reference in law to an election or a local option election held under Chapter 251 (Local Option Elections), Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. Provides that the enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of a provision of that code, including Chapter 101 (General Criminal Provisions), Alcoholic Beverage Code, apply to a violation of a provision of this chapter.

[Reserves Sections 501.004-501.020 for expansion]

#### **SUBCHAPTER B. MANNER OF CALLING ELECTION**

Sec. 501.021. ELECTION TO BE HELD. Requires the commissioners court, on proper petition by the required number of voters of a county, justice precinct, or municipality in the county, to order a local option election in the political subdivision to determine whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION TO HOLD ELECTION. (a) Requires a political subdivision to have been in existence for at least 18 months before a local option election to legalize or prohibit the sale of liquor in the political subdivision may be held.

(b) Requires the political subdivision to include substantially all the area encompassed by the political subdivision at the time of its creation and authorizes it to include any other area subsequently annexed by or added to the political subdivision.

(c) Provides that this section does not apply to a municipality incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) Requires the county clerk of the county to issue a petition regarding a local option election regarding the sale of alcoholic beverages to specific individuals, if 10 or more qualified voters of any county, justice precinct, or municipality file a written application and provide proof of publication in a newspaper of general circulation in that political subdivision.

(b) Requires the county clerk to notify the Texas Alcoholic Beverage Commission (TABC) and the secretary of state that the petition has been issued, not later than the fifth day after the date the petition is issued.

Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT. Sets forth the requirements for the application for a petition seeking an election to prohibit the sale of alcoholic beverages.

Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE. Sets forth requirements for the application for a petition seeking to legalize the sale of alcoholic beverages.

Sec. 501.026. PETITION REQUIREMENTS. Requires a petition to show the date the petition is issued by the county clerk, be serially numbered, and bear the actual seal of the county clerk on each page.

Sec. 501.027. HEADING AND STATEMENT ON PETITION TO PROHIBIT. Sets forth requirements for the contents of the petition for a local option election seeking to prohibit the sale of alcoholic beverages.

Sec. 501.028. HEADING AND STATEMENT ON PETITION TO LEGALIZE. Sets forth requirements for the petition for a local option election seeking to legalize the sale of alcoholic beverages.

Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. Provides that a person commits Class B misdemeanor if the person misrepresents the purpose or effect of a petition issued under this chapter.

Sec. 501.030. COPIES OF PETITION. Requires the county clerk to supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or municipality. Requires each copy to bear the date, number, and seal on each page as required on the original petition. Requires the county clerk to keep a copy of each petition and a record of the applicants for the petition.

Sec. 501.031. VERIFICATION OF PETITION. (a) Requires the voter registrar of the county to check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county, justice precinct, or municipality at the time the petition was issued. Authorizes the political subdivision to use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision is required verify each signature on the petition. Requires the citizen making the request to pay the reasonable cost of the verification. Requires the registrar to certify to the commissioners court the number of qualified voters signing the petition.

(b) Prohibits a petition signature from being counted unless it is the actual signature of the person and certain additional information is provided.

(c) Provides that the use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) Provides that the omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. Provides that the omission of the zip code from the address does not invalidate a signature.

(e) Provides that the signature is the only entry on the petition that is required to be in the signer's handwriting.

(f) Authorizes a signer to withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. Prohibits a signer from withdrawing the signature from a petition on or after the date the petition is received by the registrar. Provides that a withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. Provides that the withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. Requires the commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, to order a local option election to be held on the issue set out in the petition if the petition meets specific requirements. Requires voters whose names appear on the list of registered voters with the notation "S," or a similar notation, to be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. Requires specific information regarding the petition to be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. Requires the election order to include specific information.

Sec. 501.035. ISSUES. (a) Provides that in the ballot issues prescribed by this section, "wine" is limited to vinous beverages that do not contain more than 17 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. Provides that for local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) Sets forth issues which the ballot is required to include in an area where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications.

(c) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of all alcoholic beverages including mixed beverages has been legalized.

(d) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of all alcoholic beverages except mixed beverages has been legalized.

(e) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of beverages containing alcohol not in excess of 17 percent by volume has been legalized, and those of higher alcoholic content are prohibited.

(f) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited.

(g) Provides that in an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premise consumption, no alcoholic beverage may be consumed on any licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) Provides that a local option election does not affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) Provides that in any local option election in which any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized before the election remains legal without regard to the outcome of that election on the question of mixed beverages. Provides that if the sale of mixed beverages by food and beverage certificate holders was legalized before a local option election on the general sale of mixed beverages, the sale of mixed beverages in an establishment that holds a food and beverage certificate remains legal without regard to the outcome of the election on the general sale of mixed beverages.

Sec. 501.037. EVIDENCE OF VALIDITY. Provides that the commissioners court election order is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make the order valid.

Sec. 501.038. FREQUENCY OF ELECTIONS. Prohibits a local option election on a particular issue from being held in a political subdivision until after the first anniversary of the most recent local option election in that political subdivision on that issue.

[Reserves Sections 501.039-501.100 for expansion.]

#### SUBCHAPTER C. HOLDING OF ELECTION

Sec. 501.101. APPLICABILITY OF ELECTION CODE. Requires the officers holding a local option election to hold the election in the manner provided by the other provisions of this code, except as provided by this chapter.

Sec. 501.102. ELECTION PRECINCTS. (a) Requires county election precincts to be used for a local option election to be held in an entire county or in a justice precinct.

(b) Requires election precincts established by the governing body of the municipality for its municipal elections to be used for a local option election to be held in a municipality. Requires the commissioners court to prescribe the election precincts for the local option election under the law governing establishment of

precincts for municipal elections, if the governing body has not established precincts for its municipal elections.

Sec. 501.103. POLLING PLACES; NOTICE. (a) Requires the election to be held at the customary polling place in each election precinct. Requires the commissioners court to designate another polling place if the customary polling place is not available.

(b) Requires the notice for the election to state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for a municipality.

Sec. 501.104. NUMBER OF BALLOTS FURNISHED. Requires the county clerk to furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of registered voters in the precinct plus 10 percent of that number of voters, if the election is conducted using printed ballots.

Sec. 501.105. ISSUE ON BALLOT. (a) Requires the issue ordered to appear on the ballot for an election ordered by the commissioners court to be the same as the issue applied for and set out in the petition.

(b) Requires the issue appropriate to the election to be printed on the ballot in the exact language stated in Section 501.035.

Sec. 501.106. TIME FOR VOTE TALLY. Requires the votes for a local option election to be counted and the report of the election submitted to the commissioners court within 24 hours after the time the polls close.

Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. Requires the county to pay the expense of holding a local option election authorized by this chapter in the county, justice precinct, or municipality in that county, unless certain exceptions are met.

Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a) Requires the county clerk to require the applicants for a petition for a local option election to make a deposit before the issuance of the petition if a county is not required to pay the expense of a local option election under Section 501.107.

(b) Requires the deposit to be in the form of a cashier's check in an amount equal to 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or municipality where the election is to be held.

(c) Requires the money received to be deposited in the county's general fund. Prohibits a refund from being made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) Prohibits the county clerk from issuing a petition to the applicants unless a deposit required by this chapter is made.

(e) Provides that a person who violates Subsection (d) commits an offense punishable in certain manners.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a) Provides that this section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) Requires an election to which this section applies to be conducted by the municipality instead of the counties. Sets forth references in this chapter for the purposes of an election conducted under this section.

(c) Requires the municipality to pay the expense of the election.



(d) Authorizes an action to contest the election under Section 501.155 to be brought in the district court of any county in which the municipality is located.

[Reserves Sections 501.110-501.150 for expansion]

#### SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

Sec. 501.151. DECLARATION OF RESULT. (a) Requires the commissioners court to make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law on completing the canvass of the election returns.

(b) Requires the court's order, in a prohibitory election, if a majority of the votes cast do not favor a specific issue, to state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective on the 30th day after the date the order is entered. Provides that the prohibition remains in effect until changed by a subsequent local option election held under this chapter.

(c) Provides that in a legalization election, if a majority of the votes cast favor the specific issue, the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. Provides that the legalization remains in effect until changed by a subsequent local option election held under this code.

(d) Sets forth the situation in which the local option status of a political subdivision does not change.

Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. Provides that the order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

Sec. 501.153. CERTIFICATION OF RESULT. Requires the county clerk to certify the result to the secretary of state and TABC not later than the third day after the date the result of a local option election has been declared. Prohibits the clerk from charging a fee for this service.

Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) Requires a commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages to be published by posting the order at three public places in the county or other political subdivision in which the election was held.

(b) Requires the posting of the order to be recorded in the minutes of the commissioners court by the county judge. Provides that the entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of the posting.

Sec. 501.155. ELECTION CONTEST. (a) Provides that the enforcement of local option laws in the political subdivision in which an election is being contested is not suspended during an election contest.

(b) Provides that the result of an election contest finally settles all questions relating to the validity of that election. Prohibits a person from calling the legality of that election into question again in any other suit or proceeding.

(c) Provides that if an election contest is not timely instituted, it is conclusively presumed that the election is valid and binding in all respects on all courts.

SECTION 2. Amends the heading to Chapter 251, Alcoholic Beverage Code, to read as follows:

#### CHAPTER 251. LOCAL OPTION STATUS

SECTION 3. Amends Section 251.71, Alcoholic Beverage Code, by adding Subsection (e), as follows:

(e) Provides that for purposes of this code a reference to a local option election means an election held under Chapter 501, Election Code, and a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

SECTION 4. Amends Section 251.72, Alcoholic Beverage Code, to redesignate the reference to Section 251.14, Alcoholic Beverage Code, to Section 501.035, Election Code.

SECTION 5. Amends Section 251.80(c), Alcoholic Beverage Code, to redesignate the reference to Section 251.40, Alcoholic Beverage Code, to Section 501.107, Election Code.

SECTION 6. Amends Subchapter D, Chapter 251, Alcoholic Beverage Code, by adding Section 251.82, as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. Sets forth references in this code for the purposes of an election conducted under Section 501.109.

SECTION 7. Repealer: Subchapters A (Manner of Calling Election), B (Election), and C (Procedure Following Election), Chapter 251, Alcoholic Beverage Code.

SECTION 8. Provides that the saving provisions of Section 311.031, Government Code, apply to the repeal of Subchapters A, B, and C, Chapter 251, Alcoholic Beverage Code, by this Act as if those provisions were statutes to which Section 311.031 applies and to the enactment of Title 17, Election Code, by this Act as if this Act were a code governed by Chapter 311, Government Code.

SECTION 9. Effective date: September 1, 2005.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 18, 2005**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1799** by Denny ( relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), **Committee Report 2nd House, Substituted**

|   |
|---|
| <b>No fiscal implication to the State is anticipated.</b> |
|---|

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 458 Alcoholic Beverage Commission

**LBB Staff:** JOB, JRO, CL, DLBa

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 13, 2005**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1799** by Denny (Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), **As Engrossed**

|   |
|---|
| <b>No fiscal implication to the State is anticipated.</b> |
|---|

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 458 Alcoholic Beverage Commission

**LBB Staff:** JOB, CL, DLBa

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 4, 2005**

**TO:** Honorable Mary Denny, Chair, House Committee on Elections

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1799** by Denny (Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), **As Introduced**

|   |
|---|
| <b>No fiscal implication to the State is anticipated.</b> |
|---|

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 458 Alcoholic Beverage Commission

**LBB Staff:** JOB, DLBa

# REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN  
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that CSHB 1799, by Denny Fraser,  
(Bill No.) (Author/Sponsor)

was heard by the Committee on Business and Commerce on May 17,  
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Jason Baker  
(Clerk of the reporting committee)

**IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.**

ADOPTED

MAY 25 2005

*Atty. Gen.*  
Secretary of the Senate

By: Denny/Eraser H.B. No. 1799

Substitute the following for H.B. No. 1799:

By: Lucas, Jr. C.S. H.B. No. 1799

A BILL TO BE ENTITLED

AN ACT

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF

ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of

1 a provision of that code, including Chapter 101, Alcoholic Beverage  
2 Code, apply to a violation of a provision of this chapter.

3 [Sections 501.004-501.020 reserved for expansion]

4 SUBCHAPTER B. MANNER OF CALLING ELECTION

5 Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
6 the required number of voters of a county, justice precinct, or  
7 municipality in the county, the commissioners court shall order a  
8 local option election in the political subdivision to determine  
9 whether the sale of alcoholic beverages of one or more of the  
10 various types and alcoholic contents shall be prohibited or  
11 legalized in the political subdivision.

12 Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
13 TO HOLD ELECTION. (a) A political subdivision must have been in  
14 existence for at least 18 months before a local option election to  
15 legalize or prohibit the sale of liquor in the political  
16 subdivision may be held.

17 (b) The political subdivision must include substantially  
18 all the area encompassed by the political subdivision at the time of  
19 its creation and may include any other area subsequently annexed by  
20 or added to the political subdivision.

21 (c) This section does not apply to a municipality  
22 incorporated before December 1, 1971.

23 Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
24 qualified voters of any county, justice precinct, or municipality  
25 file a written application and provide proof of publication in a  
26 newspaper of general circulation in that political subdivision, the  
27 county clerk of the county shall issue to the applicants a petition



1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be

1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and

1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13               (1) clearly stated in the petition; and

14               (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter

1 registrar of the county shall check the names of the signers of  
2 petitions and the voting precincts in which the signers reside to  
3 determine whether the signers were qualified voters of the county,  
4 justice precinct, or municipality at the time the petition was  
5 issued. The political subdivision may use a statistical sampling  
6 method to verify the signatures, except that on written request  
7 from a citizen of the political subdivision for which an election is  
8 sought, the political subdivision shall verify each signature on  
9 the petition. The citizen making the request shall pay the  
10 reasonable cost of the verification. The registrar shall certify  
11 to the commissioners court the number of qualified voters signing  
12 the petition.

13 (b) A petition signature may not be counted unless the  
14 signature is the actual signature of the purported signer and the  
15 petition:

16 (1) contains in addition to the signature:  
17 (A) the signer's printed name;  
18 (B) the signer's date of birth;  
19 (C) if the territory from which signatures must  
20 be obtained is situated in more than one county, the county of  
21 registration;

22 (D) the signer's residence address; and  
23 (E) the date of signing; and  
24 (2) complies with any other applicable requirements  
25 prescribed by law.

26 (c) The use of ditto marks or abbreviations does not  
27 invalidate a signature if the required information is reasonably

1 ascertainable.

2 (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7 (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9 (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19 Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27 (1) 35 percent of the registered voters in the

1 subdivision for a ballot issue that permits voting for or against:

2 (A) "The legal sale of all alcoholic beverages  
3 for off-premise consumption only.";

4 (B) "The legal sale of all alcoholic beverages  
5 except mixed beverages.";

6 (C) "The legal sale of all alcoholic beverages  
7 including mixed beverages."; or

8 (D) "The legal sale of mixed beverages.";

9 (2) 25 percent of the registered voters in the  
10 political subdivision who voted in the most recent general election  
11 for a ballot issue that permits voting for or against "The legal  
12 sale of wine on the premises of a holder of a winery permit."; or

13 (3) 35 percent of the registered voters in the  
14 political subdivision who voted in the most recent gubernatorial  
15 election for an election on any other ballot issue.

16 (b) Voters whose names appear on the list of registered  
17 voters with the notation "S," or a similar notation, shall be  
18 excluded from the computation of the number of registered voters of  
19 a particular territory.

20 Sec. 501.033. RECORD IN MINUTES. The date a petition is  
21 presented, the names of the signers, and the action taken with  
22 respect to the petition shall be entered in the minutes of the  
23 commissioners court.

24 Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)  
25 The election order must state in its heading and text whether the  
26 local option election to be held is for the purpose of prohibiting  
27 or legalizing the sale of the alcoholic beverages set out in the

1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."

1                   (8) "The legal sale of mixed beverages."  
2                   (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."  
4                   (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."  
6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:  
10                  (1) "The legal sale of beer for off-premise  
11 consumption only."  
12                  (2) "The legal sale of beer."  
13                  (3) "The legal sale of beer and wine for off-premise  
14 consumption only."  
15                  (4) "The legal sale of beer and wine."  
16                  (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."  
18                  (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."  
20                  (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."  
22                  (8) "The legal sale of mixed beverages."  
23                  (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."  
25                  (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."  
27           (d) In an area where the sale of all alcoholic beverages



1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4 (1) "The legal sale of beer for off-premise  
5 consumption only."

6 (2) "The legal sale of beer."

7 (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9 (4) "The legal sale of beer and wine."

10 (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12 (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14 (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16 (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21 (1) "The legal sale of beer for off-premise  
22 consumption only."

23 (2) "The legal sale of beer."

24 (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26 (4) "The legal sale of beer and wine."

27 (5) "The legal sale of wine on the premises of a holder

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1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed

1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election

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1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4 (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8 (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12 Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17 (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21 (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25 (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27 (e) A person who violates Subsection (d) commits an offense.

1 An offense under this subsection is a misdemeanor punishable by:

2 (1) a fine of not less than \$200 nor more than \$500;

3 (2) confinement in the county jail for not more than 30  
4 days; or

5 (3) both the fine and confinement.

6 Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

7 This section applies only to an election to permit or prohibit the  
8 legal sale of alcoholic beverages of one or more of the various  
9 types and alcoholic contents in a municipality that is located in  
10 more than one county.

11 (b) An election to which this section applies shall be  
12 conducted by the municipality instead of the counties. For the  
13 purposes of an election conducted under this section, a reference  
14 in this chapter to:

15 (1) the county is considered to refer to the  
16 municipality;

17 (2) the commissioners court is considered to refer to  
18 the governing body of the municipality;

19 (3) the county clerk or voter registrar is considered  
20 to refer to the secretary of the municipality or, if the  
21 municipality does not have a secretary, to the person performing  
22 the functions of a secretary of the municipality; and

23 (4) the county judge is considered to refer to the  
24 mayor of the municipality or, if the municipality does not have a  
25 mayor, to the presiding officer of the governing body of the  
26 municipality.

27 (c) The municipality shall pay the expense of the election.

1        (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4        [Sections 501.110-501.150 reserved for expansion]

5        SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6        Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter.

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25           (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27           (2) in an election described by Subsection (c), less

1 than a majority of the votes cast favor the issue.

2 Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
3 commissioners court declaring the result of the election is prima  
4 facie evidence that all provisions of law have been complied with in  
5 giving notice of and holding the election, counting and returning  
6 the votes, and declaring the result of the election.

7 Sec. 501.153. CERTIFICATION OF RESULT. Not later than the  
8 third day after the date the result of a local option election has  
9 been declared, the county clerk shall certify the result to the  
10 secretary of state and the commission. The clerk may not charge a  
11 fee for this service.

12 Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A  
13 commissioners court order declaring the result of a local option  
14 election and prohibiting the sale of any or all types of alcoholic  
15 beverages must be published by posting the order at three public  
16 places in the county or other political subdivision in which the  
17 election was held.

18 (b) The posting of the order shall be recorded in the  
19 minutes of the commissioners court by the county judge. The entry  
20 in the minutes or a copy certified under the hand and seal of the  
21 county clerk is prima facie evidence of the posting.

22 Sec. 501.155. ELECTION CONTEST. (a) The enforcement of  
23 local option laws in the political subdivision in which an election  
24 is being contested is not suspended during an election contest.

25 (b) The result of an election contest finally settles all  
26 questions relating to the validity of that election. A person may  
27 not call the legality of that election into question again in any



1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code [~~251.14 of this code~~],  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:

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1 (c) The provisions of Section 501.107, Election Code,  
2 ~~[251.40 of this code]~~ relating to the payment of local option  
3 election expenses shall apply to elections held in a territory that  
4 is defined in accordance with Subsection (a) of this section.

5 SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
6 Code, is amended by adding Section 251.82 to read as follows:

7 Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
8 purposes of an election conducted under Section 501.109, Election  
9 Code, a reference in this code:

10 (1) to the county is considered to refer to the city or  
11 town;

12 (2) to the commissioners court is considered to refer  
13 to the governing body of the city or town;

14 (3) to the county clerk or registrar of voters is  
15 considered to refer to the secretary of the city or town or, if the  
16 city or town does not have a secretary, to the person performing the  
17 functions of a secretary of the city or town; and

18 (4) to the county judge is considered to refer to the  
19 mayor of the city or town or, if the city or town does not have a  
20 mayor, to the presiding officer of the governing body of the city or  
21 town.

22 SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
23 Beverage Code, are repealed.

24 SECTION 8. The saving provisions of Section 311.031,  
25 Government Code, apply to:

26 (1) the repeal of Subchapters A, B, and C, Chapter 251,  
27 Alcoholic Beverage Code, by this Act as if those provisions were

1 statutes to which Section 311.031 applies; and

2 (2) the enactment of Title 17, Election Code, by this  
3 Act as if this Act were a code governed by Chapter 311, Government  
4 Code.

5 SECTION 9. This Act takes effect September 1, 2005.

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# SENATE AMENDMENTS

2<sup>nd</sup> Printing

05 MAY 26 1982  
HOUSE OF REPRESENTATIVES

By: Denny

H.B. No. 1799

## A BILL TO BE ENTITLED

### AN ACT

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

#### TITLE 17. LOCAL OPTION ELECTIONS

#### CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF ALCOHOLIC BEVERAGES

#### SUBCHAPTER A. GENERAL PROVISIONS

#### Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of

1 a provision of that code, including Chapter 101, Alcoholic Beverage  
2 Code, apply to a violation of a provision of this chapter.

3 [Sections 501.004-501.020 reserved for expansion]

4 SUBCHAPTER B. MANNER OF CALLING ELECTION

5 Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
6 the required number of voters of a county, justice precinct, or  
7 municipality in the county, the commissioners court shall order a  
8 local option election in the political subdivision to determine  
9 whether the sale of alcoholic beverages of one or more of the  
10 various types and alcoholic contents shall be prohibited or  
11 legalized in the political subdivision.

12 Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
13 TO HOLD ELECTION. (a) A political subdivision must have been in  
14 existence for at least 18 months before a local option election to  
15 legalize or prohibit the sale of liquor in the political  
16 subdivision may be held.

17 (b) The political subdivision must include substantially  
18 all the area encompassed by the political subdivision at the time of  
19 its creation and may include any other area subsequently annexed by  
20 or added to the political subdivision.

21 (c) This section does not apply to a municipality  
22 incorporated before December 1, 1971.

23 Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
24 qualified voters of any county, justice precinct, or municipality  
25 file a written application and provide proof of publication in a  
26 newspaper of general circulation in that political subdivision, the  
27 county clerk of the county shall issue to the applicants a petition

1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be

1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and

1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13               (1) clearly stated in the petition; and

14               (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter



1 registrar of the county shall check the names of the signers of  
2 petitions and the voting precincts in which the signers reside to  
3 determine whether the signers were qualified voters of the county,  
4 justice precinct, or municipality at the time the petition was  
5 issued. The political subdivision may use a statistical sampling  
6 method to verify the signatures, except that on written request  
7 from a citizen of the political subdivision for which an election is  
8 sought, the political subdivision shall verify each signature on  
9 the petition. The citizen making the request shall pay the  
10 reasonable cost of the verification. The registrar shall certify  
11 to the commissioners court the number of qualified voters signing  
12 the petition.

13 (b) A petition signature may not be counted unless the  
14 signature is the actual signature of the purported signer and the  
15 petition:

16 (1) contains in addition to the signature:

17 (A) the signer's printed name;

18 (B) the signer's date of birth;

19 (C) if the territory from which signatures must  
20 be obtained is situated in more than one county, the county of  
21 registration;

22 (D) the signer's residence address; and

23 (E) the date of signing; and

24 (2) complies with any other applicable requirements  
25 prescribed by law.

26 (c) The use of ditto marks or abbreviations does not  
27 invalidate a signature if the required information is reasonably

1 ascertainable.

2 (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7 (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9 (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19 Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27 (1) 35 percent of the registered voters in the

subdivision for a ballot issue that permits voting for or against:

(A) "The legal sale of all alcoholic beverages for off-premise consumption only.";

(B) "The legal sale of all alcoholic beverages except mixed beverages.";

(C) "The legal sale of all alcoholic beverages including mixed beverages."; or

(D) "The legal sale of mixed beverages.";

(2) 25 percent of the registered voters in the political subdivision who voted in the most recent general election for a ballot issue that permits voting for or against "The legal sale of wine on the premises of a holder of a winery permit."; or

(3) 35 percent of the registered voters in the political subdivision who voted in the most recent gubernatorial election for an election on any other ballot issue.

(b) Voters whose names appear on the list of registered voters with the notation "S," or a similar notation, shall be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a) The election order must state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the

1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."

1           (8) "The legal sale of mixed beverages."

2           (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."

4           (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."

6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:

10           (1) "The legal sale of beer for off-premise  
11 consumption only."

12           (2) "The legal sale of beer."

13           (3) "The legal sale of beer and wine for off-premise  
14 consumption only."

15           (4) "The legal sale of beer and wine."

16           (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."

18           (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."

20           (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."

22           (8) "The legal sale of mixed beverages."

23           (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."

25           (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."

27           (d) In an area where the sale of all alcoholic beverages

1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4 (1) "The legal sale of beer for off-premise  
5 consumption only."

6 (2) "The legal sale of beer."

7 (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9 (4) "The legal sale of beer and wine."

10 (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12 (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14 (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16 (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21 (1) "The legal sale of beer for off-premise  
22 consumption only."

23 (2) "The legal sale of beer."

24 (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26 (4) "The legal sale of beer and wine."

27 (5) "The legal sale of wine on the premises of a holder

1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed

1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election



1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4 (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8 (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12 Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17 (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21 (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25 (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27 (e) A person who violates Subsection (d) commits an offense.

An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$200 nor more than \$500;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) An election to which this section applies shall be conducted by the municipality instead of the counties. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

1        (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4        [Sections 501.110-501.150 reserved for expansion]

5        SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6        Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter.

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25           (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27           (2) in an election described by Subsection (c), less

1 than a majority of the votes cast favor the issue.

2 Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
3 commissioners court declaring the result of the election is prima  
4 facie evidence that all provisions of law have been complied with in  
5 giving notice of and holding the election, counting and returning  
6 the votes, and declaring the result of the election.

7 Sec. 501.153. CERTIFICATION OF RESULT. Not later than the  
8 third day after the date the result of a local option election has  
9 been declared, the county clerk shall certify the result to the  
10 secretary of state and the commission. The clerk may not charge a  
11 fee for this service.

12 Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A  
13 commissioners court order declaring the result of a local option  
14 election and prohibiting the sale of any or all types of alcoholic  
15 beverages must be published by posting the order at three public  
16 places in the county or other political subdivision in which the  
17 election was held.

18 (b) The posting of the order shall be recorded in the  
19 minutes of the commissioners court by the county judge. The entry  
20 in the minutes or a copy certified under the hand and seal of the  
21 county clerk is prima facie evidence of the posting.

22 Sec. 501.155. ELECTION CONTEST. (a) The enforcement of  
23 local option laws in the political subdivision in which an election  
24 is being contested is not suspended during an election contest.

25 (b) The result of an election contest finally settles all  
26 questions relating to the validity of that election. A person may  
27 not call the legality of that election into question again in any

1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code [~~251.14 of this code~~],  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:

1 (c) The provisions of Section 501.107, Election Code  
2 ~~[251.40 of this code]~~ relating to the payment of local option  
3 election expenses shall apply to elections held in a territory that  
4 is defined in accordance with Subsection (a) of this section.

5 SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
6 Code, is amended by adding Section 251.82 to read as follows:

7 Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
8 purposes of an election conducted under Section 501.109, Election  
9 Code, a reference in this code:

10 (1) to the county is considered to refer to the city or  
11 town;

12 (2) to the commissioners court is considered to refer  
13 to the governing body of the city or town;

14 (3) to the county clerk or registrar of voters is  
15 considered to refer to the secretary of the city or town or, if the  
16 city or town does not have a secretary, to the person performing the  
17 functions of a secretary of the city or town; and

18 (4) to the county judge is considered to refer to the  
19 mayor of the city or town or, if the city or town does not have a  
20 mayor, to the presiding officer of the governing body of the city or  
21 town.

22 SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
23 Beverage Code, are repealed.

24 SECTION 8. This Act takes effect September 1, 2005.

ADOPTED

MAY 25 2005

*Atty. Gen.*  
Secretary of the Senate

By: Denny/Fraser

H.B. No. 1799

Substitute the following for H.B. No. 1799:

By: Lucas, Jr.

C.S. H.B. No. 1799

A BILL TO BE ENTITLED

AN ACT

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF

ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of



1 a provision of that code, including Chapter 101, Alcoholic Beverage  
2 Code, apply to a violation of a provision of this chapter.

3 [Sections 501.004-501.020 reserved for expansion]

4 SUBCHAPTER B. MANNER OF CALLING ELECTION

5 Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
6 the required number of voters of a county, justice precinct, or  
7 municipality in the county, the commissioners court shall order a  
8 local option election in the political subdivision to determine  
9 whether the sale of alcoholic beverages of one or more of the  
10 various types and alcoholic contents shall be prohibited or  
11 legalized in the political subdivision.

12 Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
13 TO HOLD ELECTION. (a) A political subdivision must have been in  
14 existence for at least 18 months before a local option election to  
15 legalize or prohibit the sale of liquor in the political  
16 subdivision may be held.

17 (b) The political subdivision must include substantially  
18 all the area encompassed by the political subdivision at the time of  
19 its creation and may include any other area subsequently annexed by  
20 or added to the political subdivision.

21 (c) This section does not apply to a municipality  
22 incorporated before December 1, 1971.

23 Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
24 qualified voters of any county, justice precinct, or municipality  
25 file a written application and provide proof of publication in a  
26 newspaper of general circulation in that political subdivision, the  
27 county clerk of the county shall issue to the applicants a petition

1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be

1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and

1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13               (1) clearly stated in the petition; and

14               (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter

1 registrar of the county shall check the names of the signers of  
2 petitions and the voting precincts in which the signers reside to  
3 determine whether the signers were qualified voters of the county,  
4 justice precinct, or municipality at the time the petition was  
5 issued. The political subdivision may use a statistical sampling  
6 method to verify the signatures, except that on written request  
7 from a citizen of the political subdivision for which an election is  
8 sought, the political subdivision shall verify each signature on  
9 the petition. The citizen making the request shall pay the  
10 reasonable cost of the verification. The registrar shall certify  
11 to the commissioners court the number of qualified voters signing  
12 the petition.

13 (b) A petition signature may not be counted unless the  
14 signature is the actual signature of the purported signer and the  
15 petition:

16 (1) contains in addition to the signature:

17 (A) the signer's printed name;

18 (B) the signer's date of birth;

19 (C) if the territory from which signatures must  
20 be obtained is situated in more than one county, the county of  
21 registration;

22 (D) the signer's residence address; and

23 (E) the date of signing; and

24 (2) complies with any other applicable requirements  
25 prescribed by law.

26 (c) The use of ditto marks or abbreviations does not  
27 invalidate a signature if the required information is reasonably

1 ascertainable.

2 (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7 (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9 (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19 Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27 (1) 35 percent of the registered voters in the

1 subdivision for a ballot issue that permits voting for or against:

2 (A) "The legal sale of all alcoholic beverages  
3 for off-premise consumption only.";

4 (B) "The legal sale of all alcoholic beverages  
5 except mixed beverages.";

6 (C) "The legal sale of all alcoholic beverages  
7 including mixed beverages."; or

8 (D) "The legal sale of mixed beverages.";

9 (2) 25 percent of the registered voters in the  
10 political subdivision who voted in the most recent general election  
11 for a ballot issue that permits voting for or against "The legal  
12 sale of wine on the premises of a holder of a winery permit."; or

13 (3) 35 percent of the registered voters in the  
14 political subdivision who voted in the most recent gubernatorial  
15 election for an election on any other ballot issue.

16 (b) Voters whose names appear on the list of registered  
17 voters with the notation "S," or a similar notation, shall be  
18 excluded from the computation of the number of registered voters of  
19 a particular territory.

20 Sec. 501.033. RECORD IN MINUTES. The date a petition is  
21 presented, the names of the signers, and the action taken with  
22 respect to the petition shall be entered in the minutes of the  
23 commissioners court.

24 Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)  
25 The election order must state in its heading and text whether the  
26 local option election to be held is for the purpose of prohibiting  
27 or legalizing the sale of the alcoholic beverages set out in the

1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."



1           (8) "The legal sale of mixed beverages."  
2           (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."  
4           (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."  
6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:  
10           (1) "The legal sale of beer for off-premise  
11 consumption only."  
12           (2) "The legal sale of beer."  
13           (3) "The legal sale of beer and wine for off-premise  
14 consumption only."  
15           (4) "The legal sale of beer and wine."  
16           (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."  
18           (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."  
20           (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."  
22           (8) "The legal sale of mixed beverages."  
23           (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."  
25           (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."  
27           (d) In an area where the sale of all alcoholic beverages

1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4 (1) "The legal sale of beer for off-premise  
5 consumption only."

6 (2) "The legal sale of beer."

7 (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9 (4) "The legal sale of beer and wine."

10 (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12 (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14 (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16 (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21 (1) "The legal sale of beer for off-premise  
22 consumption only."

23 (2) "The legal sale of beer."

24 (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26 (4) "The legal sale of beer and wine."

27 (5) "The legal sale of wine on the premises of a holder

1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed

1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election

1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4 (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8 (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12 Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17 (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21 (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25 (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27 (e) A person who violates Subsection (d) commits an offense.

1 An offense under this subsection is a misdemeanor punishable by:

2 (1) a fine of not less than \$200 nor more than \$500;

3 (2) confinement in the county jail for not more than 30  
4 days; or

5 (3) both the fine and confinement.

6 Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

7 This section applies only to an election to permit or prohibit the  
8 legal sale of alcoholic beverages of one or more of the various  
9 types and alcoholic contents in a municipality that is located in  
10 more than one county.

11 (b) An election to which this section applies shall be  
12 conducted by the municipality instead of the counties. For the  
13 purposes of an election conducted under this section, a reference  
14 in this chapter to:

15 (1) the county is considered to refer to the  
16 municipality;

17 (2) the commissioners court is considered to refer to  
18 the governing body of the municipality;

19 (3) the county clerk or voter registrar is considered  
20 to refer to the secretary of the municipality or, if the  
21 municipality does not have a secretary, to the person performing  
22 the functions of a secretary of the municipality; and

23 (4) the county judge is considered to refer to the  
24 mayor of the municipality or, if the municipality does not have a  
25 mayor, to the presiding officer of the governing body of the  
26 municipality.

27 (c) The municipality shall pay the expense of the election.

1        (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4        [Sections 501.110-501.150 reserved for expansion]

5        SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6        Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter.

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25           (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27           (2) in an election described by Subsection (c), less



1 than a majority of the votes cast favor the issue.

2 Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
3 commissioners court declaring the result of the election is prima  
4 facie evidence that all provisions of law have been complied with in  
5 giving notice of and holding the election, counting and returning  
6 the votes, and declaring the result of the election.

7 Sec. 501.153. CERTIFICATION OF RESULT. Not later than the  
8 third day after the date the result of a local option election has  
9 been declared, the county clerk shall certify the result to the  
10 secretary of state and the commission. The clerk may not charge a  
11 fee for this service.

12 Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A  
13 commissioners court order declaring the result of a local option  
14 election and prohibiting the sale of any or all types of alcoholic  
15 beverages must be published by posting the order at three public  
16 places in the county or other political subdivision in which the  
17 election was held.

18 (b) The posting of the order shall be recorded in the  
19 minutes of the commissioners court by the county judge. The entry  
20 in the minutes or a copy certified under the hand and seal of the  
21 county clerk is prima facie evidence of the posting.

22 Sec. 501.155. ELECTION CONTEST. (a) The enforcement of  
23 local option laws in the political subdivision in which an election  
24 is being contested is not suspended during an election contest.

25 (b) The result of an election contest finally settles all  
26 questions relating to the validity of that election. A person may  
27 not call the legality of that election into question again in any

1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code [~~251.14 of this code~~],  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:

1 (c) The provisions of Section 501.107, Election Code,  
2 ~~[251.40 of this code]~~ relating to the payment of local option  
3 election expenses shall apply to elections held in a territory that  
4 is defined in accordance with Subsection (a) of this section.

5 SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
6 Code, is amended by adding Section 251.82 to read as follows:

7 Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
8 purposes of an election conducted under Section 501.109, Election  
9 Code, a reference in this code:

10 (1) to the county is considered to refer to the city or  
11 town;

12 (2) to the commissioners court is considered to refer  
13 to the governing body of the city or town;

14 (3) to the county clerk or registrar of voters is  
15 considered to refer to the secretary of the city or town or, if the  
16 city or town does not have a secretary, to the person performing the  
17 functions of a secretary of the city or town; and

18 (4) to the county judge is considered to refer to the  
19 mayor of the city or town or, if the city or town does not have a  
20 mayor, to the presiding officer of the governing body of the city or  
21 town.

22 SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
23 Beverage Code, are repealed.

24 SECTION 8. The saving provisions of Section 311.031,  
25 Government Code, apply to:

26 (1) the repeal of Subchapters A, B, and C, Chapter 251,  
27 Alcoholic Beverage Code, by this Act as if those provisions were

1 statutes to which Section 311.031 applies; and

2 (2) the enactment of Title 17, Election Code, by this  
3 Act as if this Act were a code governed by Chapter 311, Government  
4 Code.

5 SECTION 9. This Act takes effect September 1, 2005.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 18, 2005**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1799** by Denny ( relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), **Committee Report 2nd House, Substituted**

|   |
|---|
| <b>No fiscal implication to the State is anticipated.</b> |
|---|

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 458 Alcoholic Beverage Commission

**LBB Staff:** JOB, JRO, CL, DLBa

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 13, 2005**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1799** by Denny (Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), **As Engrossed**

|   |
|---|
| <b>No fiscal implication to the State is anticipated.</b> |
|---|

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 458 Alcoholic Beverage Commission

**LBB Staff:** JOB, CL, DLBa

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 4, 2005**

**TO:** Honorable Mary Denny, Chair, House Committee on Elections

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1799** by Denny (Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill would remove local option elections statute from the Alcoholic Beverage Code and place it in the Elections Code. Nonsubstantive revisions would be made as well. The bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 458 Alcoholic Beverage Commission

**LBB Staff:** JOB, DLBa

F

**ENROLLED**

H.B. No. 1799

AN ACT

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF

ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of



1 a provision of that code, including Chapter 101, Alcoholic Beverage  
2 Code, apply to a violation of a provision of this chapter.

3 [Sections 501.004-501.020 reserved for expansion]

4 SUBCHAPTER B. MANNER OF CALLING ELECTION

5 Sec. 501.021. ELECTION TO BE HELD. On proper petition by  
6 the required number of voters of a county, justice precinct, or  
7 municipality in the county, the commissioners court shall order a  
8 local option election in the political subdivision to determine  
9 whether the sale of alcoholic beverages of one or more of the  
10 various types and alcoholic contents shall be prohibited or  
11 legalized in the political subdivision.

12 Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION  
13 TO HOLD ELECTION. (a) A political subdivision must have been in  
14 existence for at least 18 months before a local option election to  
15 legalize or prohibit the sale of liquor in the political  
16 subdivision may be held.

17 (b) The political subdivision must include substantially  
18 all the area encompassed by the political subdivision at the time of  
19 its creation and may include any other area subsequently annexed by  
20 or added to the political subdivision.

21 (c) This section does not apply to a municipality  
22 incorporated before December 1, 1971.

23 Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more  
24 qualified voters of any county, justice precinct, or municipality  
25 file a written application and provide proof of publication in a  
26 newspaper of general circulation in that political subdivision, the  
27 county clerk of the county shall issue to the applicants a petition

1 to be circulated among the qualified voters of the political  
2 subdivision for the signatures of those qualified voters who desire  
3 that a local option election be called for the purpose of  
4 determining whether the sale of alcoholic beverages of one or more  
5 of the various types and alcoholic contents shall be prohibited or  
6 legalized in the political subdivision.

7 (b) Not later than the fifth day after the date the petition  
8 is issued, the county clerk shall notify the commission and the  
9 secretary of state that the petition has been issued.

10 Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
11 FOR PETITION TO PROHIBIT. (a) An application for a petition  
12 seeking an election to prohibit the sale of alcoholic beverages of  
13 one or more of the various types and alcoholic contents must be  
14 headed: "Application for Local Option Election Petition to  
15 Prohibit."

16 (b) The application must contain a statement just ahead of  
17 the signatures of the applicants, as follows: "It is the hope,  
18 purpose and intent of the applicants whose signatures appear hereon  
19 to see prohibited the sale of alcoholic beverages referred to in the  
20 issue set out above."

21 (c) The issue to be voted on must be:

22 (1) clearly stated in the application; and

23 (2) one of the issues listed in Section 501.035.

24 Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
25 FOR PETITION TO LEGALIZE. (a) An application for a petition  
26 seeking an election to legalize the sale of alcoholic beverages of  
27 one or more of the various types and alcoholic contents must be

1 headed: "Application for Local Option Election Petition to  
2 Legalize."

3 (b) The application must contain a statement just ahead of  
4 the signatures of the applicants, as follows: "It is the hope,  
5 purpose and intent of the applicants whose signatures appear hereon  
6 to see legalized the sale of alcoholic beverages referred to in the  
7 issue set out above."

8 (c) The issue to be voted on must be:

9 (1) clearly stated in the application; and

10 (2) one of the issues listed in Section 501.035.

11 Sec. 501.026. PETITION REQUIREMENTS. A petition must show  
12 the date the petition is issued by the county clerk and be serially  
13 numbered. Each page of a petition must bear the same date and  
14 serial number and the actual seal of the county clerk rather than a  
15 facsimile of that seal.

16 Sec. 501.027. HEADING AND STATEMENT ON PETITION TO  
17 PROHIBIT. (a) Each page of the petition for a local option  
18 election seeking to prohibit the sale of alcoholic beverages of one  
19 or more of the various types and alcoholic contents must be headed  
20 "Petition for Local Option Election to Prohibit."

21 (b) The petition must contain a statement just ahead of the  
22 signatures of the petitioners, as follows: "It is the hope, purpose  
23 and intent of the petitioners whose signatures appear hereon to see  
24 prohibited the sale of alcoholic beverages referred to in the issue  
25 set out above."

26 (c) The issue to be voted on must be:

27 (1) clearly stated in the petition; and

1           (2) one of the issues listed in Section 501.035.

2           Sec. 501.028. HEADING AND STATEMENT ON PETITION TO  
3 LEGALIZE. (a) Each page of the petition for a local option  
4 election seeking to legalize the sale of alcoholic beverages of one  
5 or more of the various types and alcoholic contents must be headed  
6 "Petition for Local Option Election to Legalize."

7           (b) The petition must contain a statement just ahead of the  
8 signatures of the petitioners, as follows: "It is the hope, purpose  
9 and intent of the petitioners whose signatures appear hereon to see  
10 legalized the sale of alcoholic beverages referred to in the issue  
11 set out above."

12           (c) The issue to be voted on must be:

13                   (1) clearly stated in the petition; and

14                   (2) one of the issues listed in Section 501.035.

15           Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
16 A person commits an offense if the person misrepresents the purpose  
17 or effect of a petition issued under this chapter.

18           (b) An offense under this section is a Class B misdemeanor.

19           Sec. 501.030. COPIES OF PETITION. (a) The county clerk  
20 shall supply as many copies of the petition as may be required by  
21 the applicants but not to exceed more than one page of the petition  
22 for every 10 registered voters in the county, justice precinct, or  
23 municipality. Each copy must bear the date, number, and seal on  
24 each page as required on the original petition.

25           (b) The county clerk shall keep a copy of each petition and a  
26 record of the applicants for the petition.

27           Sec. 501.031. VERIFICATION OF PETITION. (a) The voter

1 registrar of the county shall check the names of the signers of  
2 petitions and the voting precincts in which the signers reside to  
3 determine whether the signers were qualified voters of the county,  
4 justice precinct, or municipality at the time the petition was  
5 issued. The political subdivision may use a statistical sampling  
6 method to verify the signatures, except that on written request  
7 from a citizen of the political subdivision for which an election is  
8 sought, the political subdivision shall verify each signature on  
9 the petition. The citizen making the request shall pay the  
10 reasonable cost of the verification. The registrar shall certify  
11 to the commissioners court the number of qualified voters signing  
12 the petition.

13 (b) A petition signature may not be counted unless the  
14 signature is the actual signature of the purported signer and the  
15 petition:

16 (1) contains in addition to the signature:  
17 (A) the signer's printed name;  
18 (B) the signer's date of birth;  
19 (C) if the territory from which signatures must  
20 be obtained is situated in more than one county, the county of  
21 registration;

22 (D) the signer's residence address; and  
23 (E) the date of signing; and

24 (2) complies with any other applicable requirements  
25 prescribed by law.

26 (c) The use of ditto marks or abbreviations does not  
27 invalidate a signature if the required information is reasonably

1 ascertainable.

2       (d) The omission of the state from the signer's residence  
3 address does not invalidate a signature unless the political  
4 subdivision from which the signature is obtained is situated in  
5 more than one state. The omission of the zip code from the address  
6 does not invalidate a signature.

7       (e) The signature is the only entry on the petition that is  
8 required to be in the signer's handwriting.

9       (f) A signer may withdraw the signer's signature by deleting  
10 the signature from the petition or by filing with the voter  
11 registrar an affidavit requesting that the signature be withdrawn  
12 from the petition. A signer may not withdraw the signature from a  
13 petition on or after the date the petition is received by the  
14 registrar. A withdrawal affidavit filed by mail is considered to be  
15 filed at the time of its receipt by the registrar. The withdrawal  
16 of a signature nullifies the signature on the petition and places  
17 the signer in the same position as if the signer had not signed the  
18 petition.

19       Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
20 commissioners court, at its next regular session on or after the  
21 30th day after the date the petition is filed, shall order a local  
22 option election to be held on the issue set out in the petition if  
23 the petition is filed with the voter registrar not later than the  
24 60th day after the date the petition is issued and bears the actual  
25 signatures of a number of qualified voters of the political  
26 subdivision equal to at least:

27       (1) 35 percent of the registered voters in the

1 subdivision for a ballot issue that permits voting for or against:

2 (A) "The legal sale of all alcoholic beverages  
3 for off-premise consumption only.";

4 (B) "The legal sale of all alcoholic beverages  
5 except mixed beverages.";

6 (C) "The legal sale of all alcoholic beverages  
7 including mixed beverages."; or

8 (D) "The legal sale of mixed beverages.";

9 (2) 25 percent of the registered voters in the  
10 political subdivision who voted in the most recent general election  
11 for a ballot issue that permits voting for or against "The legal  
12 sale of wine on the premises of a holder of a winery permit."; or

13 (3) 35 percent of the registered voters in the  
14 political subdivision who voted in the most recent gubernatorial  
15 election for an election on any other ballot issue.

16 (b) Voters whose names appear on the list of registered  
17 voters with the notation "S," or a similar notation, shall be  
18 excluded from the computation of the number of registered voters of  
19 a particular territory.

20 Sec. 501.033. RECORD IN MINUTES. The date a petition is  
21 presented, the names of the signers, and the action taken with  
22 respect to the petition shall be entered in the minutes of the  
23 commissioners court.

24 Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)  
25 The election order must state in its heading and text whether the  
26 local option election to be held is for the purpose of prohibiting  
27 or legalizing the sale of the alcoholic beverages set out in the

1 issue recited in the application and petition.

2 (b) The order must state the issue to be voted on in the  
3 election.

4 Sec. 501.035. ISSUES. (a) In the ballot issues prescribed  
5 by this section, "wine" is limited to vinous beverages that do not  
6 contain more than 17 percent alcohol by volume and includes malt  
7 beverages that do not exceed that alcohol content. For local option  
8 purposes, those beverages, sold and dispensed to the public in  
9 unbroken, sealed, individual containers, are a separate and  
10 distinct type of alcoholic beverage.

11 (b) In an area where any type or classification of alcoholic  
12 beverages is prohibited and the issue submitted pertains to  
13 legalization of the sale of one or more of the prohibited types or  
14 classifications, the ballot shall be prepared to permit voting for  
15 or against the one of the following issues that applies:

16 (1) "The legal sale of beer for off-premise  
17 consumption only."

18 (2) "The legal sale of beer."

19 (3) "The legal sale of beer and wine for off-premise  
20 consumption only."

21 (4) "The legal sale of beer and wine."

22 (5) "The legal sale of all alcoholic beverages for  
23 off-premise consumption only."

24 (6) "The legal sale of all alcoholic beverages except  
25 mixed beverages."

26 (7) "The legal sale of all alcoholic beverages  
27 including mixed beverages."



1           (8) "The legal sale of mixed beverages."

2           (9) "The legal sale of mixed beverages in restaurants  
3 by food and beverage certificate holders only."

4           (10) "The legal sale of wine on the premises of a  
5 holder of a winery permit."

6           (c) In an area where the sale of all alcoholic beverages  
7 including mixed beverages has been legalized, the ballot for a  
8 prohibitory election shall be prepared to permit voting for or  
9 against the one of the following issues that applies:

10           (1) "The legal sale of beer for off-premise  
11 consumption only."

12           (2) "The legal sale of beer."

13           (3) "The legal sale of beer and wine for off-premise  
14 consumption only."

15           (4) "The legal sale of beer and wine."

16           (5) "The legal sale of all alcoholic beverages for  
17 off-premise consumption only."

18           (6) "The legal sale of all alcoholic beverages except  
19 mixed beverages."

20           (7) "The legal sale of all alcoholic beverages  
21 including mixed beverages."

22           (8) "The legal sale of mixed beverages."

23           (9) "The legal sale of mixed beverages in restaurants  
24 by food and beverage certificate holders only."

25           (10) "The legal sale of wine on the premises of a  
26 holder of a winery permit."

27           (d) In an area where the sale of all alcoholic beverages

1 except mixed beverages has been legalized, the ballot for a  
2 prohibitory election shall be prepared to permit voting for or  
3 against the one of the following issues that applies:

4           (1) "The legal sale of beer for off-premise  
5 consumption only."

6           (2) "The legal sale of beer."

7           (3) "The legal sale of beer and wine for off-premise  
8 consumption only."

9           (4) "The legal sale of beer and wine."

10           (5) "The legal sale of all alcoholic beverages for  
11 off-premise consumption only."

12           (6) "The legal sale of all alcoholic beverages except  
13 mixed beverages."

14           (7) "The legal sale of wine on the premises of a holder  
15 of a winery permit."

16           (e) In an area where the sale of beverages containing  
17 alcohol not in excess of 17 percent by volume has been legalized,  
18 and those of higher alcoholic content are prohibited, the ballot  
19 for a prohibitory election shall be prepared to permit voting for or  
20 against the one of the following issues that applies:

21           (1) "The legal sale of beer for off-premise  
22 consumption only."

23           (2) "The legal sale of beer."

24           (3) "The legal sale of beer and wine for off-premise  
25 consumption only."

26           (4) "The legal sale of beer and wine."

27           (5) "The legal sale of wine on the premises of a holder

1 of a winery permit."

2 (f) In an area where the sale of beer containing alcohol not  
3 exceeding four percent by weight has been legalized, and all other  
4 alcoholic beverages are prohibited, the ballot for a prohibitory  
5 election shall be prepared to permit voting for or against the one  
6 of the following issues that applies:

7 (1) "The legal sale of beer for off-premise  
8 consumption only."

9 (2) "The legal sale of beer."

10 (g) In an area where the sale of a particular type of  
11 alcoholic beverage has been legalized only for off-premise  
12 consumption, no alcoholic beverage may be consumed on any licensed  
13 premises and no type of alcoholic beverage other than the type  
14 legalized may be sold.

15 Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option  
16 election does not affect the sale of mixed beverages unless the  
17 proposition specifically mentions mixed beverages.

18 (b) In any local option election in which any shade or  
19 aspect of the issue submitted involves the sale of mixed beverages,  
20 any other type or classification of alcoholic beverage that was  
21 legalized before the election remains legal without regard to the  
22 outcome of that election on the question of mixed beverages. If the  
23 sale of mixed beverages by food and beverage certificate holders  
24 was legalized before a local option election on the general sale of  
25 mixed beverages, the sale of mixed beverages in an establishment  
26 that holds a food and beverage certificate remains legal without  
27 regard to the outcome of the election on the general sale of mixed

1 beverages.

2 Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners  
3 court election order is prima facie evidence of compliance with all  
4 provisions necessary to give the order validity or to give the  
5 commissioners court jurisdiction to make the order valid.

6 Sec. 501.038. FREQUENCY OF ELECTIONS. A local option  
7 election on a particular issue may not be held in a political  
8 subdivision until after the first anniversary of the most recent  
9 local option election in that political subdivision on that issue.

10 [Sections 501.039-501.100 reserved for expansion]

11 SUBCHAPTER C. HOLDING OF ELECTION

12 Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as  
13 provided by this chapter, the officers holding a local option  
14 election shall hold the election in the manner provided by the other  
15 provisions of this code.

16 Sec. 501.102. ELECTION PRECINCTS. (a) County election  
17 precincts shall be used for a local option election to be held in an  
18 entire county or in a justice precinct.

19 (b) Election precincts established by the governing body of  
20 the municipality for its municipal elections shall be used for a  
21 local option election to be held in a municipality. If the  
22 governing body has not established precincts for its municipal  
23 elections, the commissioners court shall prescribe the election  
24 precincts for the local option election under the law governing  
25 establishment of precincts for municipal elections.

26 Sec. 501.103. POLLING PLACES; NOTICE. (a) The election  
27 shall be held at the customary polling place in each election

1 precinct. If the customary polling place is not available, the  
2 commissioners court shall designate another polling place.

3 (b) The notice for the election shall state the polling  
4 place for each election precinct and the precinct numbers of county  
5 precincts included in each municipal election precinct if the  
6 election is for a municipality.

7 Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election  
8 is conducted using printed ballots, the county clerk shall furnish  
9 the presiding judge of each election precinct with at least the  
10 number of ballots equal to the number of registered voters in the  
11 precinct plus 10 percent of that number of voters.

12 Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to  
13 appear on the ballot for an election ordered by the commissioners  
14 court must be the same as the issue applied for and set out in the  
15 petition.

16 (b) The issue appropriate to the election shall be printed  
17 on the ballot in the exact language stated in Section 501.035.

18 Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local  
19 option election shall be counted and the report of the election  
20 submitted to the commissioners court within 24 hours after the time  
21 the polls close.

22 Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The  
23 county shall pay the expense of holding a local option election  
24 authorized by this chapter in the county, justice precinct, or  
25 municipality in that county except that:

26 (1) if an election is to be held only within the  
27 corporate limits of a municipality located wholly within the

1 county, the county may require the municipality to reimburse the  
2 county for all or part of the expenses of holding the local option  
3 election;

4 (2) county payment of the expense of an election to  
5 legalize the sale of alcoholic beverages is limited to the holding  
6 of one election in a political subdivision during a one-year  
7 period; and

8 (3) county payment of the expense of an election to  
9 prohibit the sale of alcoholic beverages is limited to the holding  
10 of one election in a political subdivision during a one-year  
11 period.

12 Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a)  
13 If a county is not required to pay the expense of a local option  
14 election under Section 501.107, the county clerk shall require the  
15 applicants for a petition for a local option election to make a  
16 deposit before the issuance of the petition.

17 (b) The deposit must be in the form of a cashier's check in  
18 an amount equal to 25 cents per voter listed on the current list of  
19 registered voters residing in the county, justice precinct, or  
20 municipality where the election is to be held.

21 (c) The money received shall be deposited in the county's  
22 general fund. A refund may not be made to the applicants regardless  
23 of whether the petition is returned to the county clerk or the  
24 election is ordered.

25 (d) The county clerk may not issue a petition to the  
26 applicants unless a deposit required by this chapter is made.

27 (e) A person who violates Subsection (d) commits an offense.

An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than \$200 nor more than \$500;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a)

This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) An election to which this section applies shall be conducted by the municipality instead of the counties. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

1        (d) An action to contest the election under Section 501.155  
2 may be brought in the district court of any county in which the  
3 municipality is located.

4        [Sections 501.110-501.150 reserved for expansion]

5        SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

6        Sec. 501.151. DECLARATION OF RESULT. (a) On completing the  
7 canvass of the election returns, the commissioners court shall make  
8 an order declaring the result and cause the clerk of the  
9 commissioners court to record the order as provided by law.

10       (b) In a prohibitory election, if a majority of the votes  
11 cast do not favor the issue "The legal sale . . .," the court's  
12 order must state that the sale of the type or types of beverages  
13 stated in the issue at the election is prohibited effective on the  
14 30th day after the date the order is entered. The prohibition  
15 remains in effect until changed by a subsequent local option  
16 election held under this chapter.

17       (c) In a legalization election, if a majority of the votes  
18 cast favor the issue "The legal sale . . .," the legal sale of the  
19 type or types of beverages stated in the issue at the election is  
20 legal on the entering of the court's order. The legalization  
21 remains in effect until changed by a subsequent local option  
22 election held under this code.

23       (d) The local option status of a political subdivision does  
24 not change as a result of the election if:

25           (1) in an election described by Subsection (b), less  
26 than a majority of the votes cast do not favor the issue; and

27           (2) in an election described by Subsection (c), less



1 other suit or proceeding.

2 (c) If an election contest is not timely instituted, it is  
3 conclusively presumed that the election is valid and binding in all  
4 respects on all courts.

5 SECTION 2. The heading to Chapter 251, Alcoholic Beverage  
6 Code, is amended to read as follows:

7 CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

8 SECTION 3. Section 251.71, Alcoholic Beverage Code, is  
9 amended by adding Subsection (e) to read as follows:

10 (e) For purposes of this code:

11 (1) a reference to a local option election means an  
12 election held under Chapter 501, Election Code; and

13 (2) a local option election held under Chapter 501,  
14 Election Code, is considered to have been held under this code.

15 SECTION 4. Section 251.72, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 251.72. CHANGE OF STATUS. Except as provided in  
18 Section 251.73 of this code, an authorized voting unit that has  
19 exercised or may exercise the right of local option retains the  
20 status adopted, whether absolute prohibition or legalization of the  
21 sale of alcoholic beverages of one or more of the various types and  
22 alcoholic contents on which an issue may be submitted under the  
23 terms of Section 501.035, Election Code [~~251.14 of this code~~],  
24 until that status is changed by a subsequent local option election  
25 in the same authorized voting unit.

26 SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is  
27 amended to read as follows:

(c) The provisions of Section 501.107, Election Code,  
[~~251.40 of this code~~] relating to the payment of local option  
election expenses shall apply to elections held in a territory that  
is defined in accordance with Subsection (a) of this section.

SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage  
Code, is amended by adding Section 251.82 to read as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the  
purposes of an election conducted under Section 501.109, Election  
Code, a reference in this code:

(1) to the county is considered to refer to the city or  
town;

(2) to the commissioners court is considered to refer  
to the governing body of the city or town;

(3) to the county clerk or registrar of voters is  
considered to refer to the secretary of the city or town or, if the  
city or town does not have a secretary, to the person performing the  
functions of a secretary of the city or town; and

(4) to the county judge is considered to refer to the  
mayor of the city or town or, if the city or town does not have a  
mayor, to the presiding officer of the governing body of the city or  
town.

SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic  
Beverage Code, are repealed.

SECTION 8. The saving provisions of Section 311.031,  
Government Code, apply to:

(1) the repeal of Subchapters A, B, and C, Chapter 251,  
Alcoholic Beverage Code, by this Act as if those provisions were

1 statutes to which Section 311.031 applies; and

2 (2) the enactment of Title 17, Election Code, by this  
3 Act as if this Act were a code governed by Chapter 311, Government  
4 Code.

5 SECTION 9. This Act takes effect September 1, 2005.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1799 was passed by the House on May 9, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1799 on May 27, 2005, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 1799 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1799 was passed by the House on  
(1)

May 9  
(2)

, 2005, by a non-record vote;

and that the House concurred in Senate amendments to H.B. No. 1799

on May 27, 2005, by a non-record vote.  
(3)

\_\_\_\_\_  
Chief Clerk of the House

\*\*\*\* Preparation: CT47

I certify that H.B. No. 1799 was passed by the Senate, with  
(1)

amendments, on May 25, 2005, by the  
(2)

following vote: Yeas 31, Nays 0.  
(3) (4)

\_\_\_\_\_  
Secretary of the Senate

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\*\*\*\* Preparation: CT32

79TH LEGISLATURE

COAUTHOR AUTHORIZATION

(please request your coauthors to sign this form  
in lieu of the front or the back of the original bill)

Bill or Resolution Number: HB 1799

Mary Denny  
signature of primary author

MARY DENNY  
printed name of primary author

MAR 01 2005  
Date

PERMISSION TO SIGN HB 1799 HAS BEEN GIVEN TO (check only one of the following):  
(bill or resolution #)

☒ ALL REPRESENTATIVES  
\_\_\_\_ THE FOLLOWING REPRESENTATIVE(S): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

|                           |             |                                   |             |                                  |             |
|---------------------------|-------------|-----------------------------------|-------------|----------------------------------|-------------|
| <u>A2100 Allen, Alma</u>  | <u>Date</u> | <u>A2435 Coleman</u>              | <u>Date</u> | <u>A2800 Escobar</u>             | <u>Date</u> |
| <u>A2115 Allen, Ray</u>   | <u>Date</u> | <u>A2450 Cook, Byron</u>          | <u>Date</u> | <u>A2795 Farabee</u>             | <u>Date</u> |
| <u>A2125 Alonzo</u>       | <u>Date</u> | <u>A2565 Cook, Robert "Robby"</u> | <u>Date</u> | <u>A2810 Farrar</u>              | <u>Date</u> |
| <u>A2150 Anchia</u>       | <u>Date</u> | <u>A2595 Corte</u>                | <u>Date</u> | <u>A2840 Flores</u>              | <u>Date</u> |
| <u>A2155 Anderson</u>     | <u>Date</u> | <u>A2605 Crabb</u>                | <u>Date</u> | <u>A2850 Flynn</u>               | <u>Date</u> |
| <u>A2160 Bailey</u>       | <u>Date</u> | <u>A2610 Craddick</u>             | <u>Date</u> | <u>A2860 Frost</u>               | <u>Date</u> |
| <u>A2170 Baxter</u>       | <u>Date</u> | <u>A2640 Crownover</u>            | <u>Date</u> | <u>A2920 Gallego</u>             | <u>Date</u> |
| <u>A2205 Berman</u>       | <u>Date</u> | <u>A2620 Davis, John</u>          | <u>Date</u> | <u>A2960 Gattis</u>              | <u>Date</u> |
| <u>A2220 Blake</u>        | <u>Date</u> | <u>A2625 Davis, Yvonne</u>        | <u>Date</u> | <u>A2945 Geren</u>               | <u>Date</u> |
| <u>A2230 Bohac</u>        | <u>Date</u> | <u>A2635 Dawson</u>               | <u>Date</u> | <u>A2935 Giddings</u>            | <u>Date</u> |
| <u>A2250 Bonnen</u>       | <u>Date</u> | <u>A2680 Delisi</u>               | <u>Date</u> | <u>A2910 Gonzales</u>            | <u>Date</u> |
| <u>A2280 Branch</u>       | <u>Date</u> | <u>A3385 Denny</u>                | <u>Date</u> | <u>A4660 Gonzalez Toureilles</u> | <u>Date</u> |
| <u>A2265 Brown, Betty</u> | <u>Date</u> | <u>A2690 Deshotel</u>             | <u>Date</u> | <u>A2985 Goodman</u>             | <u>Date</u> |
| <u>A2270 Brown, Fred</u>  | <u>Date</u> | <u>A2705 Driver</u>               | <u>Date</u> | <u>A2990 Goolsby</u>             | <u>Date</u> |
| <u>A2255 Burnam</u>       | <u>Date</u> | <u>A2665 Dukes</u>                | <u>Date</u> | <u>A3010 Griggs</u>              | <u>Date</u> |
| <u>A2295 Callegari</u>    | <u>Date</u> | <u>A2660 Dunnam</u>               | <u>Date</u> | <u>A3020 Grusendorf</u>          | <u>Date</u> |
| <u>A2290 Campbell</u>     | <u>Date</u> | <u>A2650 Dutton</u>               | <u>Date</u> | <u>A3045 Guillen</u>             | <u>Date</u> |
| <u>A2490 Casteel</u>      | <u>Date</u> | <u>A2770 Edwards</u>              | <u>Date</u> | <u>A3035 Haggerty</u>            | <u>Date</u> |
| <u>A2495 Castro</u>       | <u>Date</u> | <u>A2775 Eiland</u>               | <u>Date</u> | <u>A3050 Hamilton</u>            | <u>Date</u> |
| <u>A2585 Chavez</u>       | <u>Date</u> | <u>A2780 Eissler</u>              | <u>Date</u> | <u>A2695 Hamric</u>              | <u>Date</u> |
| <u>A2480 Chisum</u>       | <u>Date</u> | <u>A2785 Elkins</u>               | <u>Date</u> | <u>A3160 Hardcastle</u>          | <u>Date</u> |

|                     |      |                        |      |                    |      |
|---------------------|------|------------------------|------|--------------------|------|
| A3165 Harper-Brown  | Date | A3540 Laubenberg       | Date | A4230 Quintanilla  | Date |
| A3170 Hartnett      | Date | A3560 Leibowitz        | Date | A4215 Raymond      | Date |
| A3190 Hegar         | Date | A3620 Luna             | Date | A4236 Reyna        | Date |
| A3140 Herrero       | Date | A3715 Madden           | Date | A4220 Riddle       | Date |
| A3250 Hilderbran    | Date | A3780 Martinez         | Date | A4250 Ritter       | Date |
| A3275 Hill          | Date | A2835 Martinez Fischer | Date | A4270 Rodriguez    | Date |
| A3305 Hochberg      | Date | A3665 McCall           | Date | A4350 Rose         | Date |
| A3290 Hodge         | Date | A3650 McClendon        | Date | A4420 Seaman       | Date |
| A3325 Homer         | Date | A3845 McReynolds       | Date | A4525 Smith, Todd  | Date |
| A3320 Hope          | Date | A3830 Menendez         | Date | A4540 Smith, Wayne | Date |
| A3330 Hopson        | Date | A3840 Merritt          | Date | A4530 Smithee      | Date |
| A3315 Howard        | Date | A3835 Miller           | Date | A4550 Solis        | Date |
| A3340 Hughes        | Date | A3855 Moreno, Joe      | Date | A4505 Solomons     | Date |
| A3355 Hunter        | Date | A3860 Moreno, Paul     | Date | A4545 Strama       | Date |
| A3360 Hupp          | Date | A3870 Morrison         | Date | A4570 Swinford     | Date |
| A3375 Isett         | Date | A3865 Mowery           | Date | A4585 Talton       | Date |
| A3350 Jackson       | Date | A3885 Naishtat         | Date | A4600 Taylor       | Date |
| A3405 Jones, Delwin | Date | A3895 Nixon            | Date | A4630 Thompson     | Date |
| District 121        | Date | A3900 Noriega          | Date | A4650 Truitt       | Date |
| A3400 Jones, Jesse  | Date | A3880 Oliveira         | Date | A4685 Turner       | Date |
| A3475 Keel          | Date | A3886 Olivo            | Date | A4695 Uresti       | Date |
| A3410 Keffer, Bill  | Date | A3930 Orr              | Date | A4700 Van Arsdale  | Date |
| A3480 Keffer, Jim   | Date | A3945 Otto             | Date | A4725 Veasey       | Date |
| A3470 King, Phil    | Date | A4100 Paxton           | Date | A4800 Villarreal   | Date |
| A3465 King, Tracy   | Date | A4140 Pena             | Date | A4900 Vo           | Date |
| A3495 Kolkhorst     | Date | A4160 Phillips         | Date | A4995 West         | Date |
| A3485 Krusee        | Date | A4180 Pickett          | Date | A4985 Wong         | Date |
| A3450 Kuempel       | Date | A4185 Pitts            | Date | A5005 Woolley      | Date |
| A3510 Laney         | Date | A4200 Puente           | Date | A5150 Zedler       | Date |

H.B. No. 1799

A BILL TO BE ENTITLED  
AN ACT

By Henry

relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

MAR 01 2005 Filed with the Chief Clerk  
MAR 11 2005 Read first time and referred to Committee on Licensing & Administrative Procedures  
APR 20 2005 Reported favorably (~~amended~~)  
(~~substituted~~)  
APR 25 2005 Sent to Committee on (Calendars)  
(~~\_\_\_\_\_~~)  
MAY 05 2005 Read second time (~~amended~~) (~~amended~~); passed to third reading (~~failed~~) by a (non-record vote)  
(~~record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting~~)  
Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)  
by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting  
MAY 09 2005 Read third time (~~amended~~); finally passed (~~failed to pass~~) by a (non-record vote)  
(~~record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting~~)  
Engrossed  
MAY 10 2005 Sent to Senate

Robert Haney  
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:  
MAR 30 2005 Re-referred to the Committee on Elections

MAY 10 2005 Received from the House  
MAY 12 2005 Read and referred to Committee on BUSINESS AND COMMERCE  
Reported favorably \_\_\_\_\_  
MAY 19 2005 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time  
Ordered not printed  
MAY 25 2005 Laid before the Senate  
Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays)  
MAY 25 2005 Read second time, \_\_\_\_\_, and passed to third reading by (~~unanimous consent~~)  
(~~a viva voce vote~~)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays)  
MAY 25 2005 Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays  
MAY 25 2005 Read third time, \_\_\_\_\_, and passed by a (~~viva voce vote~~)  
(31 yeas, 0 nays)  
MAY 25 2005 Returned to the House

Larry Spaw  
SECRETARY OF THE SENATE

OTHER SENATE ACTION:



MAY 25 2005

Returned from the Senate ~~with amendments~~ *Substituted*

MAY 27 2005

House concurred in Senate amendments by a (non-record vote)  
(record vote of ~~\_\_\_\_\_~~ yeas, ~~\_\_\_\_\_~~ nays, ~~\_\_\_\_\_~~ present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee  
by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

House conferees appointed: \_\_\_\_\_, Chair; \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Senate granted House request. Senate conferees appointed: \_\_\_\_\_, Chair;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Conference committee report adopted (rejected) by the House by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays)

05 MAY 26 AM 8:26

HOUSE OF REPRESENTATIVES

05 APR 22 PM 11:50

HOUSE OF REPRESENTATIVES